

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

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Date of Incident:	May 31, 2011
Time of Incident:	10:44 pm
Location of Incident:	12355 S. Wallace Street, Chicago IL
Date of IPRA Notification:	May 31, 2011
Time of IPRA Notification:	10:58 pm

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On May 31, 2011, at approximately 10:44 pm, Officers [REDACTED] (Officer [REDACTED]) [REDACTED] (Officer [REDACTED]) and [REDACTED] (Officer [REDACTED]) were working beat [REDACTED]. They were on patrol in the vicinity of 124<sup>th</sup> Street and Normal Avenue when they observed two male subjects, [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) walking on the sidewalk at 124<sup>th</sup> Street toward Wallace Street. According to the officers, [REDACTED] was acting suspicious and making movements with his hands near his waist area. The officers stopped their marked squad car and gave orders for [REDACTED] and [REDACTED] to show their hands and approach the officers. [REDACTED] ignored the officers' orders and continued to walk at a faster pace westbound on 124<sup>th</sup> Street toward Wallace Street.

The officers exited their marked vehicle and pursued [REDACTED] on foot towards Wallace Street. According to the officers, when [REDACTED] reached the corner of Wallace Street and 124<sup>th</sup> Street, he turned toward the officers and pointed a handgun at them. Officer [REDACTED] immediately discharged his weapon in the direction of [REDACTED] who turned on Wallace Street and ran northbound from 124<sup>th</sup> Street. Officer [REDACTED] and Officer [REDACTED] stated they saw [REDACTED] point and discharge his firearm multiple times in the direction of Officer [REDACTED] before running northbound on Wallace Street from 124<sup>th</sup> Street down the sidewalk. However, according to witness [REDACTED] all officers opened fire on [REDACTED] without reason and without [REDACTED] brandishing a firearm.

According to the officers, as [REDACTED] turned northbound on Wallace Street from 124<sup>th</sup> Street, Officers [REDACTED] and [REDACTED] continued their pursuit. As [REDACTED] the street from the east side of Wallace Street to the west side, Officers [REDACTED] and [REDACTED] again fired their weapons at [REDACTED] multiple times, who they believed was still carrying a firearm. [REDACTED] continued to run [REDACTED] Wallace Street and into a wooded area on the west side of Wallace Street near a church. Officers [REDACTED] and [REDACTED] continued to pursue and entered the wooded area. As Officers [REDACTED] and [REDACTED] entered the wooded area, they saw [REDACTED] lying on the ground in the lot. Officers [REDACTED] and [REDACTED] then fired additional rounds at [REDACTED] while he laid on the ground, not moving, near the northwest corner of the vacant lot. Officers [REDACTED] and [REDACTED] admitted to not being able to see [REDACTED] hands prior to opening fire in the vacant lot. While [REDACTED] was still on the ground, not moving, Officer

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

█████ reloaded his weapon and fired additional shots at ██████. Simultaneously, Officer ██████ transitioned from his rifle to his handgun and fired additional shots at ██████. ██████ was fatally struck in the head during this final volley of shots in the wooded lot and expired on scene. A non-operable firearm was found along the route in which ██████ fled. No additional firearm was found in the possession of ██████ or the vicinity of the pursuit.

This case was originally closed as within policy on December 11, 2013. The case was reopened on March 24, 2016 as a result of the conclusion of the civil case and has concluded that there was insufficient evidence to determine that the first volley of shots fired by Officers ██████ and ██████ were within Department policy. The report does however conclude that Officer ██████ last two volleys of shots violated Department policy. While Officer ██████ was interviewed by IPRA and deposed during the civil trial, he was unavailable to be interviewed during COPA's subsequent investigation and thus this report does not address Officer ██████ actions.<sup>2</sup>

## II. INVOLVED PARTIES

Involved Officer #1:	█████ Star# ██████ Employee# ██████ DOA: ██████ 2006, Officer, Assigned to Unit ██████ Detailed to Unit ██████ DOB: ██████ 1981, Male, Asian/Pacific Islander
Involved Officer #2:	█████ Star# ██████ Employee# ██████ DOA: ██████ 2006, Officer, Assigned to Unit ██████ Detailed to Unit ██████ DOB: ██████ 1982, Male, Hispanic
Involved Officer #3:	█████ Star# ██████ Employee# ██████ DOA: ██████ 2005, Officer, Assigned to Unit ██████ Detailed to Unit ██████ DOB: ██████ 1976, Male, Hispanic
Involved Individual #1:	█████ DOB: ██████ 1992, Male, Black

## III. ALLEGATIONS

Officer	Allegation	Finding
Officer ██████	1) It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection	Sustained

<sup>2</sup> COPA served administrative allegations against Officer ██████ and attempted to interview Officer ██████ regarding his conduct relating to his incident. On May 16, 2018, Officer ██████ served COPA with a Motion for Temporary Restraining Order and Preliminary Injunction in Circuit Court of Cook County Case No. 18 CH ██████. Officer ██████ asserted in the Motion that he was on medical leave from the Chicago Police Department. Officer ██████ filed the motion to enjoin COPA from interviewing him regarding the incident in question in this case. The case was settled on August 10, 2018. Officer ██████ agreed to dismiss the lawsuit, and COPA agreed it would not continue to seek to interview Officer ██████ while Officer ██████ remains on medical leave from the Chicago Police Department. Officer ██████ has not returned to active duty with the Chicago Police Department and therefore has not been interviewed by COPA.

	<p>of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED]</p> <p>2) It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by failing to deescalate his use of deadly force after initially discharging his weapon at or in the direction of [REDACTED]</p> <p>3) On June 1, 2011, at Area 2, 727 E. 111th Street, Chicago, Illinois, it is alleged that Officer [REDACTED] provided a false statement to the Independent Police Review Authority regarding [REDACTED] physical movements, while [REDACTED] was on the ground, prior to discharging his weapon at or in the direction of [REDACTED] by stating: "...I see him lying down on, on the ground makin' several movements. Um, me and my partner are yellin' let me see your hands, let me see your hands. He's not complying. Fearing he's armed, I, I open fire."</p>	<p>Sustained</p> <p>Not Sustained</p>
Officer [REDACTED]	<p>1. It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED]</p>	Not Sustained

#### IV. APPLICABLE RULES AND LAWS

##### Rules

1. Rule 14: Making a false report, written or oral.

##### General Orders

1. General Order 03-02-01- Use of Force Model
2. G03-02-03- Deadly Force

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**Federal Laws**

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**1. The Fourth Amendment to the United States Constitution**

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**State Laws**

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**1. 720 ILCS 5/7-5 (1986)**

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**V. INVESTIGATION<sup>3 4</sup>**

IPRA, and subsequently COPA, gathered relevant documentation, and conducted interviews of the accused officers, and reviewed depositions of the involved parties during the course of the investigation. The relevant substance of these investigative steps is detailed as follows.

**a. Interviews and Depositions****i. Involved Officer Interviews and Depositions**

**Officer [REDACTED]** was interviewed on June 1, 2011 at Area 2 by IPRA.<sup>5</sup>

Officer [REDACTED] stated on May 31, 2011, he began his patrol at 5:00 pm, working beat [REDACTED] in a black battle dress uniform<sup>6</sup>, and in a marked squad car. His partners were Officers [REDACTED] and [REDACTED] two officers he had not worked with before. Officer [REDACTED] was the front passenger of the patrol vehicle as the officers patrolled high crime areas in the [REDACTED] District. Before the time of the incident, the officers made no arrests and conducted only a few field interviews.

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<sup>3</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>4</sup> COPA served administrative allegations against Officer [REDACTED] and attempted to interview Officer [REDACTED] regarding his conduct relating to his incident. On May 16, 2018, Officer [REDACTED] served COPA with a Motion for Temporary Restraining Order and Preliminary Injunction in Circuit Court of Cook County Case No. 18 CH [REDACTED]. Officer [REDACTED] asserted in the Motion that he was on medical leave from the Chicago Police Department. Officer [REDACTED] filed the motion to enjoin COPA from interviewing him regarding the incident in question in this case. The case was settled on August 10, 2018. Officer [REDACTED] agreed to dismiss the lawsuit, and COPA agreed it would not continue to seek to interview Officer [REDACTED] while Officer [REDACTED] remains on medical leave from the Chicago Police Department. Officer [REDACTED] has not returned to active duty with the Chicago Police Department and therefore has not been interviewed by COPA. As a result, any allegations concerning Officer [REDACTED] will not be addressed in this Summary Report of Investigation. Instead, the Summary Report of Investigation will discuss the allegations brought against Officers [REDACTED] and [REDACTED]. If, and when, Officer [REDACTED] returns to active duty at the Chicago Police Department, COPA will make additional efforts to interview Officer [REDACTED] and an additional Summary Report of Investigation will be produced to address Officer [REDACTED] conduct in reference to the allegations alleged against him.

<sup>5</sup> Area 2 is a Detective Division located at 727 E. 111th Street, Chicago, IL, 2<sup>nd</sup> Floor, police station.

<sup>6</sup> Att. 148, p. 3, line 28. Although Officer [REDACTED] detailed that he was in a "black battle dress uniform," he did not define that term, other than to say it was in an all-black uniform.



The officers patrolled near the area of 12355 S. Wallace Street, as there were reports of shots fired earlier in the day. As they approached Wallace Street, driving westbound on 124<sup>th</sup> Street, Officer [REDACTED] saw two young men walking in tandem westbound on 124<sup>th</sup> Street near Wallace Street. The road was unlit, so the driver, Officer [REDACTED] flashed the spotlight of the police vehicle to check for criminal activity. They first saw one of the men, now known to be [REDACTED] wearing a black t-shirt, and brown shorts, reach toward his right pocket or waistband area. [REDACTED] "would not look down or at the officers."<sup>7</sup> Officer [REDACTED] pulled out his flashlight to investigate, believing the man may be trying to discard drugs. Officer [REDACTED] stopped the car in the middle of the street parallel to the two young men, who continued walking westbound on 124<sup>th</sup> Street toward Wallace Street. Officer [REDACTED] exited first to confront [REDACTED] and conduct a field interview.

Officer [REDACTED] informed [REDACTED] he wanted to speak with him for a moment. [REDACTED] ignored Officer [REDACTED] did not look in his direction and kept walking westbound. After a couple more requests to stop, Officer [REDACTED] eventually said "Stop, police."<sup>8</sup> The second young man, now known to be [REDACTED] who was wearing an orange shirt and blue jeans, stopped at this command, but [REDACTED] continued to touch and reach for his right side near his waistband or pocket area. Officer [REDACTED] indicated that both Officers [REDACTED] and [REDACTED] exited the vehicle at this time, but that all the officers had their weapons holstered.<sup>9</sup> At this point the officers were parallel to [REDACTED] positioned in the street on 124<sup>th</sup> Street.

Officer [REDACTED] indicated [REDACTED] then continued westbound toward the corner of 124<sup>th</sup> Street and Wallace Street, at which point he began to run. Officer [REDACTED] placed his hand on his weapon but did not unholster it. Officer [REDACTED] had his flashlight on [REDACTED] and saw him turn his torso to the left. [REDACTED] was illuminated by a spotlight from the police vehicle. Officer [REDACTED] stated: "I observed the barrel of a handgun that I know was a handgun with the front sight on it, rising against the body of his left side or his left arm."<sup>10</sup> When Officer [REDACTED] saw the blue steel handgun<sup>11</sup> reach [REDACTED] left shoulder, he feared for Officer [REDACTED] safety, as Officer [REDACTED] was in [REDACTED] potential line of fire. Officer [REDACTED] then fired several shots, with both hands on his gun, at [REDACTED] Officer [REDACTED] estimated he was about 6 feet directly behind [REDACTED] when he fired the shots. Officer [REDACTED] indicated that he had no time to alert or say anything to his two partners, and that the event happened quickly. Officer [REDACTED] indicated that he clearly saw [REDACTED] torso moving left with the handgun in his right hand, and he could clearly see the front sight, on the firearm, as he had a flashlight on [REDACTED] body. Officer [REDACTED] indicated that he saw [REDACTED] arm, with the firearm, in hand rising up his body, passing his elbow, at which point he believed the gun was pointing directly in Officer [REDACTED] direction. Officer [REDACTED] never saw [REDACTED] fire the weapon, but the weapon was pointed in the direction of his partner Officer [REDACTED]

Officer [REDACTED] indicated that after he fired, [REDACTED] ran around a gray SUV from rear to front on Wallace Street, and Officer [REDACTED] lost direct sight of him and ceased firing. Officer

<sup>7</sup> Att. 148, p. 8, line numbers 19-20.

<sup>8</sup> Att. 148, p. 10, line number 31.

<sup>9</sup> It should be noted that [REDACTED] carried a City of Chicago Police Department Carbine Rifle on May 31, 2011.

<sup>10</sup> Att. 148, p. 12, line numbers 7-11.

<sup>11</sup> It should be noted that blue-steel can be a metallic black.

██████ did not know whether he struck ██████ or not. Officer ██████ then saw ██████ weave in between multiple vehicles on Wallace Street and eventually lost sight of ██████ again. Officer ██████ partners maintained a line of sight on ██████ and pursued ██████. Officer ██████ heard additional gunshots at that time, and he took cover behind a vehicle parked on the southeastern corner of Wallace Street. Officer ██████ stated he was unable to call anything out over his radio because he held his gun with both hands, and his radio was handheld as opposed to shoulder-mounted. After hearing additional gunshots, he paused for a second, then advanced towards the gunfire.

After emerging from cover, Officer ██████ moved toward the gunfire and saw Officers ██████ and ██████ running diagonally northwest across an empty lot. Officer ██████ did not see ██████ run into the same empty lot.<sup>12</sup> He stated that he lost sight of ██████ after he turned in front of the SUV. Officer ██████ went northbound on Wallace Street and made a left on 123<sup>rd</sup> Street, emerging on a railroad track to cut off the suspect's expected path of travel. Officer ██████ then observed a wooded area, and on the other side of a tall fence, he saw ██████ in handcuffs on the ground. Officer ██████ still had his weapon drawn as he approached, only holstering it when he heard his partners say the man was handcuffed. Officer ██████ learned from Officers ██████ and ██████ that ██████ had fired a weapon at them. According to Officer ██████ at no point did he ever see ██████ fire the weapon.

Officer ██████ was deposed on January 14, 2015. Officer ██████ testimony was materially consistent with his IPRA interview but added some additional clarity and detail.

As ██████ reached the sidewalk ramp on 124<sup>th</sup> Street nearing Wallace Street, ██████ "turned and the barrel of a pistol protruded up to his shoulder, up to his elbow, and that's when I fired."<sup>13</sup> Officer ██████ indicated that ██████ "...twisted his torso in a way that immediately made me put my hand on my weapon. And then the barrel of a handgun protruded up around his shoulder, up around his elbow up to his shoulder, and that is when I fired, in fear."<sup>14</sup> Officer ██████ indicated that ██████ never turned around, but he twisted his body and pointed the firearm in Officer ██████ direction. Officer ██████ was a car length behind ██████ or approximately six feet. ██████ then fled behind a vehicle onto Wallace Street where Officer ██████ lost sight of him.

Officer ██████ learned after the incident that he fired five shots at ██████. Although Officer ██████ was not concentrated upon the approximate location of either Officers ██████ or ██████ at the time, Officer ██████ at some point heard the driver's side door of his police vehicle close and knew that Officer ██████ would have been to his left and slightly behind him, when ██████ was turning with the weapon in his hand. He never saw ██████ fire his weapon.

Officer ██████ called a 10-1, on the radio for shots fired by the police, took cover behind a tree and SUV, and followed the pursuit of ██████ north on Wallace Street. Officer ██████ was able to peek out from behind the SUV and saw Officer ██████ standing two car lengths, north of Officer ██████ in a ready to fire position, with the butt of the rifle against his shoulder. He then

<sup>12</sup> In the Detective's GPR, it is noted that Officer ██████ did see ██████ run into the vacant lot. See Att. 191, p. 12.

<sup>13</sup> Att. 158, at p. 75, line numbers 8-10.

<sup>14</sup> Att. 158, at p. 75-76, line numbers p. 75, lines 22-24 and p. 76, lines 1-2.

heard a gunshot and took cover behind the SUV. Again, Officer ██████ peeked out from his point of cover and saw Officers ██████ and ██████ run northwest into a wooded field located north of a church.

Officer ██████ followed the pursuit, north on Wallace Street toward 123<sup>rd</sup> Street to cut ██████ off, if he doubled back. He eventually turned west in an alleyway and heard several additional gunshots to the south. Officer ██████ heard three different weapons. He heard the rifle Officer ██████ carried, as well as a low sub caliber kind of weapon and a second handgun. Officer ██████ proceeded down the alley. When asked whether Officer ██████ heard either officer tell ██████ to drop the gun, he could not recall whether he heard that or not. Eventually, Officer ██████ came upon trees obstructing his path and yelled he was the police. He heard Officer ██████ or Officer ██████ indicate ██████ was in custody and in handcuffs. Upon back-up officers arriving, Officer ██████ was helped over the fence. He then heard Officers ██████ and ██████ call for an ambulance. He saw ██████ lying face down with his hands handcuffed. Officer ██████ informed Officer ██████ that he and Officer ██████ were fired at. When responding officers arrived, the officers were separated. Officer ██████ learned Officer ██████ guarded a revolver recovered from the scene.<sup>15</sup>

Officer ██████ was interviewed by COPA on February 6, 2018. During this interview, Officer ██████ mapped out the path he took from 124th Street to meet up with his partners in the wooded area. He also mapped out two locations where he heard gunshots in the alley during his pursuit of ██████. Officer ██████ estimated it took nearly one and a half minutes to get to the location of his partners from when he initially took cover. Upon seeing a photograph of a brown handled revolver found at the scene, Officer ██████ identified the revolver as the weapon he saw the night of the incident possessed by ██████.

Officer ██████ was asked to explain the inconsistency between his statements in the IPRA interview and the deposition regarding whether ██████ ever turned and looked at the officers in the squad car as they approached. In his IPRA interview, Officer ██████ did not mention ██████ turning around upon the officers illuminating him, stating instead ██████ “would not look down or look at the officers.”<sup>16</sup> However, in his deposition, Officer ██████ said ██████ peeked back and had a “strange look on his face, like holy shit.”<sup>17</sup> Officer ██████ said ██████ turned around and had the strange look on his face; it was after that point ██████ never looked at the officers again.

Officer ██████ again stated he never saw ██████ fire the weapon. ██████ saw ██████ go behind the SUV parked on Wallace and onto the road. Officer ██████ then turned onto Wallace Street but did not fire because of the houses and people in the background. He saw ██████ “weaving between cars” on the east side of Wallace. Officer ██████ learned after the incident that ██████ gun was inoperable and could not fire.<sup>18</sup>

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<sup>15</sup> Att. 158.

<sup>16</sup> Att. 189, pg. 17, line 13-14.

<sup>17</sup> Att. 189, pg. 18, line 3-4.

<sup>18</sup> Atts. 180, 189.

Officer [REDACTED] was interviewed on June 1, 2011 at Area 2 by IPRA.<sup>19</sup> Officer [REDACTED] stated on the date of the incident, May 31, 2011, he was in uniform,<sup>20</sup> working beat [REDACTED] in a marked squad car with two partners, Officer [REDACTED] and Officer [REDACTED]. Officer [REDACTED] was the rear passenger behind the driver. When he reached the area of 124th Street and Wallace Street, he observed two individuals walking westbound on the sidewalk on the northside of the street.

According to Officer [REDACTED] he observed a male<sup>21</sup> Black wearing a black t-shirt and shorts making several movements with his right hand toward his waistband area. There was also a second male<sup>22</sup> Black wearing an orange t-shirt. Because Officer [REDACTED] was familiar with the high crime area and because there was an earlier call of shots fired in the area, they decided to approach [REDACTED] for a field interview, believing he may be armed. Officer [REDACTED] partners gave verbal commands to the two subjects, to show their hands and one subject continued to walk away from the officers, ignoring their commands. The other subject complied with the officers' commands and stopped. At that point, Officer [REDACTED] exited the vehicle; Officers [REDACTED] and [REDACTED] were already out of the vehicle. The one subject continued to walk away and not follow verbal commands. Officer [REDACTED] stated: "they [his partners] start givin' verbal commands, let me see your hands. Stop let me see your hands. And I see the individual walkin' faster. I'm exitin' the vehicle and we still givin' verbal commands. And the individual is not complyin' to verbal commands."<sup>23</sup> Officer [REDACTED] immediately approached [REDACTED] because he was not following the officers' verbal commands, and he continued to make movements with his right hand toward his waistband area as he increased speed toward the corner of 124<sup>th</sup> Street and Wallace Street. According to Officer [REDACTED] at that point, he saw [REDACTED] with a black colored handgun in his right hand.

As Officer [REDACTED] approached [REDACTED] Officer [REDACTED] was ahead of him and closer to [REDACTED]. As [REDACTED] reached the corner of the sidewalk, Officer [REDACTED] saw [REDACTED] use his right hand to bring the handgun in their direction. Officer [REDACTED] stated: "Fearin' for my life, I wanted to like see every single move, where it was, the weapon going to be movin'."<sup>24</sup> Officer [REDACTED] stated he feared for his life and the life of his partners at that moment. Officer [REDACTED] discharged his weapon toward [REDACTED]. Officer [REDACTED] went around Officer [REDACTED] on his left side to avoid discharging at Officer [REDACTED] who was in his line of fire. Officer [REDACTED] took two steps to the left, took his rifle with both hands and fired at [REDACTED] fearing for his life because he saw the gun in [REDACTED] right hand. Officer [REDACTED] stated that there was artificial lighting in the area which helped him see [REDACTED].

[REDACTED] ran when the officers fired at him. Officer [REDACTED] continued to pursue [REDACTED] as he ran. According to Officer [REDACTED] was still bringing the gun toward the officers as he ran, and Officer [REDACTED] observed muzzle flashes from [REDACTED] weapon as he ([REDACTED] returned fire. Officer [REDACTED] stated: "[a]t that point I see the individual like bring the weapon towards us as he's runnin'. And I observe muzzle flight from the weapon."<sup>25</sup> Officer [REDACTED] described this as a fluid movement in which both he and [REDACTED] moved at a quick pace as he fired his rifle at [REDACTED] and

<sup>19</sup> Area 2 is a Detective Division located at 727 E. 111th Street, Chicago, IL, 2<sup>nd</sup> Floor, police station.

<sup>20</sup> Uniform consisted of all black clothes.

<sup>21</sup> Now known as [REDACTED]

<sup>22</sup> Now known as [REDACTED]

<sup>23</sup> Att. 144 at p. 10, lines 15-20.

<sup>24</sup> Att. 144 at p. 13, lines 14-16.

<sup>25</sup> Att. 144 at p. 22, lines 15-18.

noticed muzzle flashes from the [REDACTED] firearm. Officer [REDACTED] heard three shots and saw three muzzle flashes, as [REDACTED] was beginning to run away. [REDACTED] continued running northbound on the east side of the sidewalk, on Wallace Street. Officer [REDACTED] never saw [REDACTED] drop anything, including the firearm.

Officer [REDACTED] stated [REDACTED] was running really fast, and that he lost sight of him, for maybe a second or two because of bushes and a tree in the way. Officer [REDACTED] spotted [REDACTED] again, who was still running on the sidewalk, and fired a few more rounds at [REDACTED]. Officer [REDACTED] fired a few more rounds as [REDACTED] the street, going diagonally toward the other side of Wallace Street. Officer [REDACTED] could not see [REDACTED] right hand, as he ran, but he stated that [REDACTED] was still holding his waistband area and he did not see him drop his weapon. With regard to this third volley of shots, Officer [REDACTED] stated he believed [REDACTED] was armed and feared for his life and that he was trying to eliminate the threat: "I saw him again believing he's still armed, I don't, I don't see his right hand, fear for my safety. I see, I see him cross into the, the middle of the, of the street going uh, uh diagonal again. And I see him uh runnin' crossin' the street. I fire a few more rounds."<sup>26</sup> Officer [REDACTED] advised he was never stationary, when he shot at [REDACTED]

[REDACTED] crossed over to the other side of the street and ran through some bushes. Officer [REDACTED] briefly lost sight of [REDACTED] called a 10-1 (officer emergency) and continued the path of flight in search of [REDACTED]

Officer [REDACTED] eventually, saw [REDACTED] laying down on the ground making several movements. Officer [REDACTED] and his partner (Officer [REDACTED]) yelled to [REDACTED] "let me see your hands, let me see your hands."<sup>27</sup> Officer [REDACTED] stated, "I see him layin' down on, on the ground makin' several movements. Um, me and my partner are yellin' let me see your hands, let me see your hands. Show me your hands. He's not complying. Fearing he's armed, I, I open fire."<sup>28</sup> Officer [REDACTED] stated he saw [REDACTED] body make several movements and indicated: "I feared for my life. Cause I believe he, he's getting' ready to be in a shooting position."<sup>29</sup> Officer [REDACTED] fired approximately three rounds from his rifle. Upon learning his rifle no longer had ammunition, Officer [REDACTED] transitioned to his 9-millimeter semiautomatic weapon on his right hip and fired three more times from that weapon at [REDACTED] while he lay on the ground.<sup>30</sup> Officer [REDACTED] standing next to Officer [REDACTED] fired his weapon as well. The officers were less than 15 feet away from [REDACTED] when they fired.

Officer [REDACTED] indicated because of the street lights, he clearly saw [REDACTED]. After this last volley of shots by Officer [REDACTED] he no longer saw movement from [REDACTED] even after giving additional verbal commands. Officer [REDACTED] approached and placed handcuffs on [REDACTED]. Officer [REDACTED] went over the radio again and stated "shots fired by police, at the police. We need an ambulance for this individual. He's in handcuffs."<sup>31</sup> Officer [REDACTED] arrived maybe a minute after [REDACTED] was handcuffed. Officer [REDACTED] stopped firing because he believed the threat had been

<sup>26</sup> Att. 144 at p. 26-27 lines 27-32 on p. 26 & lines 2-3 on p. 27.

<sup>27</sup> Lines 27 and 28 on page 31 of Att. 144.

<sup>28</sup> Att. 144 at p. 31, lines 25-30.

<sup>29</sup> Att. 144 at p. 33, lines 7-9.

<sup>30</sup> Officer [REDACTED] indicated that the rifle contained at a minimum 28 bullets. As such, he fired 28 bullets from his rifle, as well as three additional bullets from his semi-automatic handgun.

<sup>31</sup> Lines 30-32 on page 39 of Att. 144.

eliminated. However, he stated he did not realize that [REDACTED] was hit until he approached and noticed [REDACTED] was unresponsive.<sup>32</sup> When asked specifically, when did you become aware [REDACTED] was hit, Officer [REDACTED] responded, "When I uh after he was not movin' at all we fired a few rounds...we were still yelling verbal commands."<sup>3334</sup>

Officer [REDACTED] was deposed on February 7, 2014. Officer [REDACTED] deposition provided some points of clarification. Officer [REDACTED] was a part of the now disbanded Mobile Strike Force that patrolled some of Chicago's most violent neighborhoods. Officer [REDACTED] carried a rifle or carbine that evening because he was informed by the district lieutenant to carry the rifle, if he was qualified with it. Officer [REDACTED] noticed [REDACTED] when [REDACTED] looked back toward the officers' direction. [REDACTED] was making small movements with his right hand near his waistband area.<sup>35</sup>

When Officer [REDACTED] exited the vehicle, he ran around the vehicle and noticed [REDACTED] moving his upper body toward the left looking back in the officers' direction and pointing a firearm in the officers' direction. Officer [REDACTED] recalled, "When I got out of the car, I'm getting--I'm running after,--I remember going around the car running, and at that point I see [REDACTED] moving his upper body towards the left looking back at our direction and presenting a firearm."<sup>36</sup> [REDACTED] right hand was across his chest at his left shoulder or upper arm area pointing a handgun in the officers' direction. [REDACTED] was running during this time. According to Officer [REDACTED] Officer [REDACTED] was the closest to [REDACTED] at this time, and Officer [REDACTED] discharged his weapon at [REDACTED] Officer [REDACTED] moved to the left of Officer [REDACTED] because he was a few feet directly behind him, so as not to strike Officer [REDACTED] and discharged his rifle at [REDACTED] According to Officer [REDACTED] about the same time he fired his rifle at [REDACTED] [REDACTED] fired his weapon in the officers' direction. [REDACTED] was on the corner of 124<sup>th</sup> Street and Wallace Street when he first fired the gun in the officers' direction. Officer [REDACTED] indicated that he saw [REDACTED] face as he turned and pointed the weapon toward the officers. Officer [REDACTED] confirmed that neither [REDACTED] nor the officers were stationary during this gunfire exchange.

[REDACTED] turned right, at the corner of 124<sup>th</sup> Street and Wallace Street; he ran on the sidewalk down Wallace Street. According to Officer [REDACTED] as [REDACTED] turned the corner on the east side of Wallace Street and was running, [REDACTED] was still pointing his gun at him and still shooting in the officers' direction. Officer [REDACTED] stated, "Everything happened very quickly. At the moment he's running he points a gun, [REDACTED] fires. About the same time, I fire, [REDACTED] fires, and he's making a right turn right at the corner."<sup>37</sup> Officer [REDACTED] indicated that he was approximately 20 feet from [REDACTED] when he fired the first time at or near the corner of Wallace Street and 124<sup>th</sup> Street. According to Officer [REDACTED] fired at him more than three times. The first time [REDACTED] fired he was on 124<sup>th</sup> Street. The second time [REDACTED] fired he was on the corner of 124<sup>th</sup> Street and Wallace Street. The third and fourth time [REDACTED] fired he was northbound on Wallace Street. [REDACTED] continued to run on the east side of the sidewalk down Wallace Street. Officer [REDACTED] pursued him running in the street, in the same direction, on Wallace Street. Officer [REDACTED] ordered [REDACTED]

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<sup>32</sup> Atts. 143, 144.

<sup>33</sup> Att. 144 at p. 43-44, lines 29-30 on p. 43 & line 1 on p. 44.

<sup>34</sup> Atts. 143-144.

<sup>35</sup> Att. 160 at p. 75, lines 2-3.

<sup>36</sup> Att. 160 at p. 82, lines 3-7.

<sup>37</sup> Att. 160 at p. 96, lines 3-6.

to stop and to show his hands. [REDACTED] did not comply. Officer [REDACTED] lost sight of [REDACTED] for a couple of seconds, and when he regained sight of him again, Officer [REDACTED] discharged his rifle toward [REDACTED] again. Officer [REDACTED] stated regarding these shots, "[f]earing that he's still armed and he's going to turn around and fire on me again, I open fire."<sup>38</sup> Officer [REDACTED] admitted he did not attempt to take cover.

At some point during the pursuit, [REDACTED] ran into the street to get to the west side of Wallace Street. While [REDACTED] was running across the street, he was in front of Officer [REDACTED] and fearing that [REDACTED] was going to turn around and fire, Officer [REDACTED] discharged his rifle again at [REDACTED] as [REDACTED] was running in the street. Officer [REDACTED] stated: "[a]s I said, everything happened so quickly. He runs across the street. At that moment he's more like in front of me. Fearing that he's going to turn around, I opened fire—or point the gun at me again, I opened fire as he's running in the middle of the street."<sup>39</sup> He was approximately 40-50 feet away from [REDACTED] at that point when he discharged his rifle. [REDACTED] continued to run to the west side of Wallace Street and ran into a vacant lot area that was very bushy.

Officer [REDACTED] continued to pursue [REDACTED] into the vacant lot. According to Officer [REDACTED] [REDACTED] was wearing a black T-shirt. He could see that T-shirt moving around in the bushes when he first ran into the bushy area, but he could not clearly see [REDACTED]. As Officer [REDACTED] was running into the bushy area, he was still yelling for [REDACTED] to stop and show his hands. At this point he does not fire again at [REDACTED] because he could not see him. As he continues to pursue [REDACTED] he stated: "[o]nce he made it to the bushes, at the end of the bushes there's some fences. As I'm running, and I don't see him anymore I'm still yelling stop, let me see your hands, let me see your hands, stop. At the end of the bushes there's some fences. I make it to the end as well, and then I see [REDACTED] at this point laying down on the ground flat [on his stomach] facing my direction. Fearing that he is getting in a shooting position, fearing for my life, I open fire."<sup>40</sup> Officer [REDACTED] indicated he could only see part of [REDACTED] back, head and feet as he was lying on the ground facing Officer [REDACTED] direction. Officer [REDACTED] is clear that he could not see [REDACTED] hands. Asked whether he gave any verbal commands to [REDACTED] when he saw him by the fence before firing, Officer [REDACTED] responded, "At that point it was a split-second decision. I'm facing a life-threatening situation. Fearing I'm about to get shot and killed, in a split-second decision I opened fire. Everything happened very quickly."<sup>41</sup>

As noted above, Officer [REDACTED] stated, he feared [REDACTED] was getting into a shooting position and he discharged his rifle three more times and then transitioned to his semiautomatic handgun and fired three more times with that weapon. Over the course of these four volleys of gun fire, Officer [REDACTED] fired a total of twenty-eight rounds from his rifle and three rounds from his semiautomatic weapon. In the last volley of shots, Officer [REDACTED] fired a total of six rounds from both his rifle and handgun when [REDACTED] was on the ground. Officer [REDACTED] stated that [REDACTED] was about fifteen feet directly in front of Officer [REDACTED] when Officer [REDACTED] fired the last rounds from his rifle and semiautomatic weapon at [REDACTED]. Officer [REDACTED] indicated that the weapon transition - from rifle to handgun - took a matter of seconds. Officer [REDACTED] further indicated that

<sup>38</sup> Att. 160 at p. 104, lines 13-15.

<sup>39</sup> Att. 160 at p. 107, lines 3-8.

<sup>40</sup> Att. 160 at p. 113, lines 8-17.

<sup>41</sup> Att. 160 at p. 120, lines 9-13.

he discharged these last shots in a stationary position. Officer [REDACTED] was immediately to the right of Officer [REDACTED] in the vacant lot and fired simultaneously to Officer [REDACTED] during this time period when [REDACTED] was lying on the ground. The following exchange is particularly relevant to this last set of shots fired by Officer [REDACTED]

“Q: Directly in front of you. Before you fired those last shots, did you see [REDACTED] move? When I say last shot, I’m referring to the approximately three shots from the rifle and the three shots from the pistol.

A. You’re asking me after?

Q. Before that.

A. Before that?

Q. Yes.

A. If I saw him move?

Q. Yes.

[Objection from Mr. [REDACTED] Officer [REDACTED] Attorney: I’m going to object to the form in terms of when before, but as you understand it, answer the question].

A. I understand that before I fired those shots, you’re asking me if I saw his movement?

Q. Yes.

A. I didn’t see his hands. I didn’t see him complying to my verbal commands.

Q. Did you see him move is my question.

A. No.<sup>42</sup>

When pressed again that he did not see [REDACTED] move before firing his final shots, Officer [REDACTED] stated he does not recall seeing [REDACTED] move, and that “I didn’t have time to see him.”<sup>43</sup> Officer [REDACTED] stated that because he did not see [REDACTED] show his hands, he saw no indication that [REDACTED] was no longer a threat.

Officer [REDACTED] learned that a revolver was recovered on the east sidewalk of Wallace Street. Officer [REDACTED] stated that despite the recovered revolver being inoperable, it looked similar to the one that [REDACTED] fired at the officers. Officer [REDACTED] stated that there could have been an additional unrecovered firearm used by [REDACTED]

Officer [REDACTED] reviewed a photograph of [REDACTED] body and was asked questions regarding the placement of Officer [REDACTED] during the final shots. Officer [REDACTED] indicated that the below image was in fact his vantage point or perspective that evening when he fired those final shots at [REDACTED] and that the only difference was that [REDACTED] was on his stomach and that the grass nearest to the camera was higher during the shooting but pushed down slightly by the number of officers who entered the area post shooting. The photograph below is the vantage point of Officer [REDACTED] that evening, outside of the artificial light.<sup>44</sup>

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<sup>42</sup> Att. 160 at p. 141-142.

<sup>43</sup> Att. 160 at p. 145, line 1.

<sup>44</sup> Att. 160.





Officer [REDACTED] was interviewed on February 5, 2018 at the COPA offices. His interview was materially similar to previous interviews and depositions, with some points clarified. According to Officer [REDACTED] Officer [REDACTED] fired his weapon first before either [REDACTED] or Officer [REDACTED]. Officer [REDACTED] indicated the last time he saw [REDACTED] holding the gun, which was pointed in his direction, was before he lost sight of [REDACTED] behind a tree, as [REDACTED] ran northbound on the east sidewalk on Wallace Street.

Officer [REDACTED] affirmed and stood by his previous answer that he did not see [REDACTED] move before firing his final three shots from his rifle before then transitioning and firing his final three additional shots from his handgun.<sup>45</sup> Officer [REDACTED] was asked to reconcile the apparent contradiction between his IPRA statement, where Officer [REDACTED] said [REDACTED] was moving before the last shots, and his deposition, where Officer [REDACTED] said [REDACTED] was not moving before the last shots. Officer [REDACTED] stated he meant in the deposition that [REDACTED] was not moving immediately before the last shots; however, he meant in his IPRA statement that [REDACTED] was moving at some point earlier in the altercation when [REDACTED] saw him on the ground by the fence, but he was not moving immediately before Officer [REDACTED] discharged his final six shots. Officer [REDACTED] stated: “[t]o the best of my recollection, I gave a statement in 2011, and I gave this other statement in 2014. I answered the question the way that I remembered and the way I answered this question, this is the way I understood it, this is asking me right before the shots, right before the shots. To the best of my recollection, and right before I opened fire, I don’t see him moving. That’s my understanding of the question and the answers.”<sup>46</sup> Officer [REDACTED] attempts to clarify again, stating: “[t]his [the deposition] is asking me right before the shots, if I see movement, right before. The way this is asked and the way it’s stated, the way I understand it is, I see him laying down on the ground moving, and right before the shots, I don’t see him moving. He’s not complying with my verbal commands to show his hands. Fearing he’s still armed, I used deadly force.”<sup>47</sup>

<sup>45</sup> Att. 190 at p. 37.

<sup>46</sup> Att. 190 at p. 40-41; p. 40 lines 22-24 & p. 41 lines 1-6.

<sup>47</sup> Att. 190 at p. 41, lines 18-24.

Officer [REDACTED] was unable to recall, due to this interview being seven years later, what the time difference generally or in seconds was between when Officer [REDACTED] allegedly saw [REDACTED] moving in the wooded area, and when [REDACTED] stopped moving before Officer [REDACTED] opened fire. When asked whether at any point between the firing of the rifle and Officer [REDACTED] transition to the handgun, did he determine whether [REDACTED] was moving or a threat, Officer [REDACTED] stated: “[s]ir, this is happening very, very quickly. I’m just reacting to the threat that I had in front of me. I responded to my training, and that’s all I did, that’s all I remember.”<sup>48</sup>

Officer [REDACTED] was interviewed on June 1, 2011, at Area 2<sup>49</sup> by IPRA investigators. On May 31, 2011, Officer [REDACTED] was in the Mobile Strike Force unit, driving a marked squad car, with partners Officers [REDACTED] and [REDACTED]. The officers were patrolling the area of 124<sup>th</sup> Street and Wallace Street, because it was a high crime area.

As they approached 124<sup>th</sup> Street and Wallace Street, Officer [REDACTED] saw two Black men walking on the sidewalk of 124<sup>th</sup> Street. One of the men, later identified as [REDACTED] wore a black shirt and was securing something in his waistband when he looked in the direction of the squad car. Officer [REDACTED] shined the spot lamp of the police vehicle onto [REDACTED] who continued to secure something in his waistband. From experience, Officer [REDACTED] believed [REDACTED] could be armed. Officer [REDACTED] stopped the car in the middle of 124<sup>th</sup> Street, to approach the men for a field interview. The three officers announced their office and exited the car. Officer [REDACTED] had his gun drawn believing [REDACTED] may be armed.

Officer [REDACTED] stated he was to the left of Officer [REDACTED] approximately five to ten feet from [REDACTED] when he “looked at P.O. [REDACTED] and I observed a barrel of a gun. And I heard some shots. That’s when Officer [REDACTED] fired at the individual fearing for his safety and my safety.”<sup>50</sup> Officer [REDACTED] shouted, “Police, stop!” when he initially saw the gun. Officer [REDACTED] saw [REDACTED] raise his hand, then saw a muzzle flash, and believed the officers were fired upon. Officer [REDACTED] stated he not only saw a muzzle flash, but also heard a gunshot from [REDACTED]. When Officer [REDACTED] fired, [REDACTED] was at the corner, on the sidewalk, of 124<sup>th</sup> Street and Wallace Street. [REDACTED] then began to run northbound on Wallace Street on the sidewalk with him and Officer [REDACTED] in pursuit.

[REDACTED] ran on the sidewalk on Wallace Street, before cutting in front of a large tree. At this time, [REDACTED] ran diagonally across the street. Officer [REDACTED] discharged his firearm, for the first time in the direction of [REDACTED]. Officer [REDACTED] stated: “[a]t that point, at, at that moment once you know me and my partner, Officer [REDACTED] we’re continuing to attempt to apprehend the offender, um, you know we see ‘em across the street and he’s looking at us and he’s securing his waistband area. So, then me and my partner Officer [REDACTED] we return fire because we were scared that he might, sure he might kill us.”<sup>51</sup> Officer [REDACTED] estimated he was approximately 10-15 feet from [REDACTED] at the time of his first round of shots.

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<sup>48</sup> Att. 190 at p. 49, lines 6-9.

<sup>49</sup> Area 2 is a Detective Division located at 727 E. 111th Street, Chicago, IL, 2<sup>nd</sup> Floor, police station.

<sup>50</sup> Att. 146 at p. 10, lines 1-5.

<sup>51</sup> Att. 146 at p. 16, lines 18-25.

████ continued running, into a dark vacant lot, filled with bushes and trees. Officers █████ and █████ follow, shouting "Police, police, come outta the bushes."<sup>52</sup> He sees █████ lying on the ground, but noticed he was still moving around. They were 10-15 ft away from █████ and had a clear visual of him. According to Officer █████ the officers were yelling at the top of their lungs, telling him to come out for the police. Officer █████ stated, "And you know he's still moving. He's making a lot of movement. He still has his hands in his waistband area. Then we immediately open fire."<sup>53</sup> Officer █████ could not recall whether █████ was lying on his stomach or back but believed he attempted to hide behind bushes. Officer █████ stated he and Officer █████ "gave "several verbal commands, he's not, he's still movin' around you know and that's when I fear for my life and my partner's life, Officer █████ I'm like I don't want to get shot. I wanna go home. That's when we opened fire."<sup>54</sup>

Once Officer █████ and Officer █████ stopped shooting, they continued to give commands for █████ to come out. "Once he didn't make any movement to our best knowledge we approached the offender cautiously at the same time givin' 'em verbal commands to show his hands. After he didn't show his hands, we placed him into custody."<sup>55</sup> While Officer █████ gun was still pointed at █████ handcuffed █████ They both called for an ambulance and back-up, which arrived around three minutes later. Officer █████ could not tell whether █████ was hit or injured, but he was told █████ was dead when the paramedics arrived. Officer █████ was informed he fired nine rounds, during the incident. Officer █████ stated he reloaded at some point, while in the bushes.<sup>56</sup>

Officer █████ was deposed on February 11, 2014. Officer █████ deposition brought additional clarity to his conduct regarding this incident. At around 10:00 pm on May 31, 2011, Officer █████ drove his squad car west on 124<sup>th</sup> Street. As they passed Princeton,<sup>57</sup> the officers noticed two Black men walking side-by-side westbound on the north sidewalk of 124<sup>th</sup> about a half-a-block ahead. The squad car's headlights were on, and there was artificial lighting in the area. As the squad car approached, the man farthest from the street, later identified as █████ looked back in the direction of the officers and began reaching for his front waistband area. Officer █████ told his partners, █████ could be armed. There was a decision made by everyone in the car to approach the two men. Officer █████ pulled the car up alongside the two men, turned the car's spotlight on, and parked in the street.

The officers exited the vehicle. Officer █████ had his weapon drawn as he exited the vehicle and went around the front of the vehicle, as he shouted, "show me your hands," to the two men. Officer █████ said he had reasonable suspicion to stop █████ believing him to be possibly armed, based on the movements █████ made near his waistband, and because his sergeants said there were recent shootings in the area. █████ complied with the orders from the officers and stopped, but █████ walked away. Officer █████ saw █████ from approximately 10-15 feet away, with a firearm. Officer █████ stated, "I approached █████ and the other subject along with Officer █████ and then I observed █████ reach into his waistband area, turn around, and begin to fire at

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<sup>52</sup> Att. 146 at p. 20, lines 6-7.

<sup>53</sup> Att. 146 at p. 20, lines 11-14.

<sup>54</sup> Att. 146 at p. 22, lines 14-18.

<sup>55</sup> Att. 146 at p. 23, lines 18-23.

<sup>56</sup> Atts. 145 & 146.

<sup>57</sup> Although Officer █████ indicates the street as Princeton Avenue, based on a map of the area and geographical distance for which the officers and civilians travel, Officer █████ is more than likely referring to Parnell Avenue.

us.”<sup>58</sup> Officer [REDACTED] added, “I observed [REDACTED] continue to reach towards his waistband area. I shouted verbal commands to show me your hands. He did not. As I got closer to him, I saw [REDACTED] reach into his front waistband area and he began to fire his gun at –towards my direction and along with my partners’ direction.”<sup>59</sup> Officer [REDACTED] indicated Officer [REDACTED] fired his weapon first, with regard to the three officers, and he may have done so simultaneously to [REDACTED] firing his weapon at the officers.

Officer [REDACTED] indicated that [REDACTED] was at the corner of 124<sup>th</sup> Street and Wallace Street when [REDACTED] fired at the officers. Officer [REDACTED] indicated that the entire incident happened extremely quickly, but that he believes [REDACTED] fired two to three times in the officers’ direction.<sup>60</sup> Officer [REDACTED] stated he saw two to three muzzle flashes from [REDACTED] gun, all of which occurred at the intersection of 124<sup>th</sup> Street and Wallace Street on the sidewalk. Officer [REDACTED] stated: It was just constant bang, bang, bang and then he fled on Wallace.”<sup>61</sup> [REDACTED] was moving as he was firing his weapon. Officer [REDACTED] indicated that he saw the black barrel of a handgun. Officer [REDACTED] stated, “He removed a firearm from his waistband. He turned around. He shot at us real quick. And from what I could see at that time, and it was within seconds, it was a black-colored barrel of a handgun.”<sup>62</sup>

The first place Officer [REDACTED] remembers discharging his firearm at [REDACTED] was on the corner of 124<sup>th</sup> Street and Wallace Street. Officer [REDACTED] was constantly moving. Officer [REDACTED] stated, “Well, it happened so—it happened really fast. From what I can recall, he turned his body slightly, okay? He had the gun in his right hand and he had his right arm across his shoulder. So, what I can see at that time, because it happened really fast, is his left part of his shoulder and a portion of his side of his body.”<sup>63</sup> Officer [REDACTED] was closest to [REDACTED] when Officer [REDACTED] fired, and Officer [REDACTED] was slightly behind both Officer [REDACTED] and Officer [REDACTED]. Officer [REDACTED] returned fire at [REDACTED] when [REDACTED] was at the corner of 124<sup>th</sup> Street and Wallace Street. Officer [REDACTED] recalled in that moment seeing Officer [REDACTED] to his right, with his rifle drawn, but could not recall whether Officer [REDACTED] fired at the corner of 124<sup>th</sup> Street and Wallace Street. Officer [REDACTED] does not recall how many specific shots he fired from this location.

After [REDACTED] fired at the officers, [REDACTED] turned right and ran onto the eastern sidewalk of Wallace Street, along a wooden fence, by a large tree, on the corner of Wallace Street and 124<sup>th</sup> Street. Officer [REDACTED] pursued [REDACTED]. Officer [REDACTED] took a couple of steps on the east sidewalk of Wallace Street, then moved onto the street because it was too dangerous to follow directly behind [REDACTED] when Officer [REDACTED] only saw his back. Officer [REDACTED] could not see [REDACTED] hands or a weapon when [REDACTED] ran northbound down Wallace Street on the sidewalk. [REDACTED] did not fire any additional shots while he ran on Wallace Street on the sidewalk.

Officer [REDACTED] pursued [REDACTED] down Wallace Street and observed [REDACTED] run west across Wallace Street. Officer [REDACTED] fired a second set of shots at [REDACTED] when [REDACTED] crossed Wallace Street westbound. Officer [REDACTED] does not recall how many shots he fired at [REDACTED] from this location. Officer [REDACTED] stated, [REDACTED] was running with both of his hands reaching towards his front waistband area.

<sup>58</sup> Att. 159 at p. 104, lines 12-13.

<sup>59</sup> Att. 159 at p. 109-110, p. 109 lines 23-24 & p.110 lines 1-5.

<sup>60</sup> Att. 159 at p.118, lines 1-2.

<sup>61</sup> Att. 159 at p. 119, lines 13-15.

<sup>62</sup> Att. 159 at p. 120, lines 16-20.

<sup>63</sup> Att. 159 at p. 138, lines 17-23.

Officer [REDACTED] clarified, "Well, when I first saw him—let me clarify this up. When I first saw him cut across Wallace Street onto 124<sup>th</sup>, I could not see his hands. But then within seconds I saw his hands towards his waistband area, and that's when I fired."<sup>64</sup> He was 15-20 ft from [REDACTED] when fired at [REDACTED] at this point. Officer [REDACTED] yelled at [REDACTED] to show his hands. He supported his actions to discharge his weapon by stating, "Yes, because I continued to fear for my life and my safety that he just fired a few second ago and he's going to be still armed. So yes, that's when I discharged my firearm."<sup>65</sup>

[REDACTED] then ran into a vacant lot and hid in the bushes. Officer [REDACTED] stated, "I observed [REDACTED] moving in the bushes. I'm still yelling verbal commands, shouting show me your hands, show me your hands, see the bushes move. Then moments later I observe [REDACTED] lay on his stomach."<sup>66</sup> As [REDACTED] enters the vacant lot and the bushes, Officer [REDACTED] indicated he did not see him with a gun. When [REDACTED] was in the bushes, and not observable, Officer [REDACTED] did not fire at [REDACTED] nor in the direction of the movement, within the bushes. [REDACTED] was on his stomach, facing Officer [REDACTED] direction. Officer [REDACTED] saw [REDACTED] shoulders and upper chest area. At this point, Officer [REDACTED] was approximately 15-25 feet from [REDACTED] Officer [REDACTED] saw over the grass at [REDACTED] as he laid on his stomach facing the direction of the officers. Officer [REDACTED] stated: "It was--I could not see his hands. He was, like I said from – it happened really fast from what I recall. He was facing towards my direction and I could not see his hands. I was still shouting verbal commands to show me his hands, you know. And at that time, I'm still worried that this guy is going to shoot at me again."<sup>67</sup>

Officer [REDACTED] fired at [REDACTED] and reloaded his firearm, while he shot at [REDACTED] in the grassy lot. When asked specifically why he continued to fire at [REDACTED] when was not doing anything, Officer [REDACTED] responded, "I continued to fire at him because he was still a threat to me. And after we were shouting show me your hands, he's not complying with any of our verbal commands. So, I at the time, I don't know if he's still armed or not or what's going on."<sup>68</sup> Officer [REDACTED] fired at [REDACTED] in the grassy lot because he could not see his hands. Officer [REDACTED] fired an undetermined amount of times, in the grassy area before his weapon went into slide lock, meaning he was out of ammunition. He reloaded the weapon and fired two additional rounds at [REDACTED] In this last volley, Officer [REDACTED] fired a total of nine rounds. The capacity of his gun is seven. Officer [REDACTED] reloaded his weapon "within seconds."<sup>69</sup> The following excerpt from the deposition is relevant to the shooting:

"Q.: And at any time while [REDACTED] is laying on the ground on his stomach in this lot, do you ever see him with a gun?

A No.

Q. Do you ever see him raise either of his hands in your direction?

A. I was unable to see his hands.

Q. So, do you ever see his hands raised in your direction then?

A. No.

Q. Do you ever see him say anything to you, or hear him say anything to you?

<sup>64</sup> Att. 159 at p. 148, line 16-20.

<sup>65</sup> Att. 159 at p. 150, line 4-7.

<sup>66</sup> Att. 159 at p. 165, line 14-18.

<sup>67</sup> Att. 159 at p. 179, lines 3-9.

<sup>68</sup> Att. 159 at p. 182, line 14-16.

<sup>69</sup> Att. 159 at p. 188, line 11.

- A. No.  
Q. Do you ever see him move?  
A. Again, it happened so fast, no.”<sup>70</sup>

Officer [REDACTED] then contradicted this response by indicating he fired at [REDACTED] because “his body was facing in our direction, in which he was facing south, and he was moving around and he was not complying to any of our verbal commands.”<sup>71</sup> Officer [REDACTED] then stated he saw [REDACTED] hands near his waistband area, Officer [REDACTED] indicated he meant after he handcuffed [REDACTED] he could tell his hands were in front of his body. Officer [REDACTED] further indicated immediately before [REDACTED] body was handcuffed, his hands and arms were by his sides. [REDACTED] did not have anything in his hands and a firearm was not located anywhere near his body.

When their sergeant arrived, he separated the three officers. Officer [REDACTED] remembered seeing a revolver other officers recovered at the scene; but he did not think that was the same gun that [REDACTED] pointed and fired at the three officers. Officer [REDACTED] stated that the weapon recovered was not the same gun he saw [REDACTED] point and fire at him. Officer [REDACTED] recalled multiple officers searching the area for a second weapon. Officer [REDACTED] did not tell any police personnel on scene, that evening, that he did not believe the recovered revolver was the gun used by [REDACTED].<sup>72</sup>

## ii. Witness Officer Depositions

Officer [REDACTED] was deposed on January 16, 2015. On the day of the incident, Officer [REDACTED] was in an all-black uniform. According to Officer [REDACTED] he was on patrol near Halsted Street with his partner when he heard gunfire. Officer [REDACTED] and his partner headed in the direction of the gunfire even before they heard the emergency call go over the radio. He heard, seconds later, “shots fired by the police” over the radio.<sup>73</sup>

When Officer [REDACTED] arrived on the scene he located the involved officers in the vacant lot. Officer [REDACTED] jumped over the fence and asked the involved officers if they were okay. Officer [REDACTED] also saw an individual lying on the ground. Officer [REDACTED] then backtracked out the vacant lot to look for evidence. According to Officer [REDACTED] nobody informed him of the path the officers took, he just backtracked to Wallace Street because it was a direct route of travel out of the vacant lot. He had an indication that the event may have started closer to where the involved officers’ vehicle was parked. Officer [REDACTED] had his flash light out and began searching for evidence. When Officer [REDACTED] crossed Wallace Street and walked along the east sidewalk, he saw a weapon on the sidewalk.

Officer [REDACTED] stated when he walked toward the firearm on the sidewalk, he saw a Black male with short hair walking toward the firearm as if he was going to pick up the firearm. Officer [REDACTED] believed the male did not see him coming and believed that the individual was planning to pick up the gun had he not been present. Once the individual saw Officer [REDACTED] he pointed to the gun on the ground and indicated something to the effect, there’s a gun right there. The man’s

<sup>70</sup> Att. 159 at p. 187-188, p 187 line 11-24 & p 188 line 1.

<sup>71</sup> Att. 159 at p. 194, line 11-14.

<sup>72</sup> Att. 159.

<sup>73</sup> Att. 163, at p. 42.

name was [REDACTED] Officer [REDACTED] indicated that the man kind of leaned forward like he was going to bend over and pick up the gun. Officer [REDACTED] identified the firearm as a revolver. From that point, Officer [REDACTED] watched the firearm, until the evidence technicians arrived on scene. Officer [REDACTED] did not fill out a supplementary report regarding this information but informed the detective.<sup>74</sup>

### iii. Civilian Depositions

[REDACTED] was deposed<sup>75</sup> on December 18, 2014.<sup>76</sup> [REDACTED] met [REDACTED] through Job Corps in 2010, where they both received vocational training in union masonry. Between December 2010 and May 2011, [REDACTED] and [REDACTED] hung out every day, as [REDACTED] was staying at the Cross-family home. [REDACTED] said neither he nor [REDACTED] were part of any gangs or gang factions. [REDACTED] never saw [REDACTED] carry a gun. [REDACTED] indicated the two of them had a BB gun. [REDACTED] brought the gun home once but stated that “[i]t wouldn’t shoot. It’s a blank gun.”<sup>77</sup> [REDACTED] also described the gun as a stunt gun. [REDACTED] indicated that the stunt gun was black.

[REDACTED] was shown a photograph of a man holding a gun, purported by defense counsel as [REDACTED]. However, [REDACTED] was unable to identify the man in the photograph because the photo was blurry. [REDACTED] did indicate that the gun in the photo was not the stunt gun that [REDACTED] had brought home.<sup>78</sup>

According to [REDACTED] on the night of the incident, he and [REDACTED] decided to walk toward 124<sup>th</sup> Street and Halsted Street to meet girls. [REDACTED] and [REDACTED] first noticed the police on Parnell Avenue. The police vehicle approached 123rd Street and Parnell Avenue without headlights. As [REDACTED] and [REDACTED] continued walking on 124th Street toward Wallace Street, the police pulled over quickly, screeching the tires, and immediately exited the vehicle, with their weapons drawn. All three officers yelled “freeze” and “put your hands up.” [REDACTED] was shocked because he and [REDACTED] had not done anything wrong. The officers had the vehicle’s spotlight on them. One of the officers had a rifle pointed at [REDACTED] and [REDACTED]. The other two officers had their weapons pointed at [REDACTED] and [REDACTED]. Approximately five seconds passed between when the police vehicle pulled over and the officers yelled freeze. Two of the officers exited the front of the car with their handguns drawn, and the third officer came from the back of the vehicle with his rifle pointed at [REDACTED] and [REDACTED]. [REDACTED] described all three officers as having white skin. [REDACTED] described the formation of the three officers, as the one nearest to [REDACTED] was the officer who exited the front passenger seat, now known to be Officer [REDACTED]. The other two officers were a few feet behind the initial officer on his left and right sides, respectively.

<sup>74</sup> Att. 163.

<sup>75</sup> IPRA had previously attempted to interview [REDACTED] but was not successful. Att. 13.

<sup>76</sup> [REDACTED] was deposed at Newton Correctional Facility of the Iowa Department of Corrections. [REDACTED] had plead guilty to burglary and was serving his sentence. [REDACTED] also has one additional felony conviction for unlawful use of a weapon. He was arrested and convicted in September 2011 in Cook County. [REDACTED] was also charged and plead guilty to a forgery conviction in Burlington, Iowa.

<sup>77</sup> Att. 161 at p. 60, line number 20.

<sup>78</sup> COPA requested the photograph and exhibit related to the “stunt gun” from the City of Chicago Corporation counsel via subpoena, as well as through Plaintiff’s counsel and the Iowa court reporter who transcribed the deposition, but none were able to produce this photograph and exhibit.



According to [REDACTED] he and [REDACTED] stopped for a moment, but as the officers moved closer with their guns pointed, [REDACTED] ran. [REDACTED] began to run as soon as the officers reached the grassy area or parkway before the sidewalk. All three officers chased [REDACTED] firing their weapons at him. [REDACTED] did not know which officer fired first but stated all three fired at [REDACTED] and ran after simultaneously. The incident started steps from the corner of 124<sup>th</sup> Street and Wallace Street. [REDACTED] diagrammed the position of [REDACTED] the three officers, and himself, when [REDACTED] ran.<sup>79</sup> [REDACTED] never put his hands up; he ran. As [REDACTED] ran past the corner of 124<sup>th</sup> Street and Wallace Street, he ran into the street on Wallace Street.

[REDACTED] was running diagonally across Wallace street toward the church when the first shots were fired. [REDACTED] never saw [REDACTED] run onto the Wallace Street sidewalk. The police stopped shooting for two or three seconds but started shooting again. The police never gave any commands while inside their police vehicle or after they fired at [REDACTED] When [REDACTED] ran onto Wallace Street, [REDACTED] ran toward Normal Avenue, in the opposite direction, to get [REDACTED] family. As [REDACTED] turned back, he could no longer see the officers or [REDACTED] but still heard gunshots.

After the incident concluded, the police arrived at the [REDACTED] family home and asked to speak to [REDACTED] accompanied them to the police station. [REDACTED] informed the detectives of what he saw, and mentioned to the detectives, they had a stunt gun, but did not say it was in he or [REDACTED] possession that evening. [REDACTED] did not know whether [REDACTED] had a gun in his possession that evening, meaning stunt gun or otherwise.

[REDACTED] was interviewed by COPA investigators on November 21, 2018, over the phone. [REDACTED] is currently incarcerated in an Iowa state penitentiary on an unrelated matter. COPA sent a picture of the recovered revolver to the jail before the interview. [REDACTED] indicated that he had never seen the gun in the photograph. [REDACTED] described the gun he was referring to during the deposition as a "stunt gun" as a 9mm chrome gun with a black handle. He stated it looked like a Glock. He indicated that the stunt gun could not fire.

[REDACTED] further stated that he never saw [REDACTED] with any type of gun on the night of the incident. [REDACTED] last saw the stunt gun a week prior to the incident. [REDACTED] also stated that he removed the stunt gun from the [REDACTED]-family home after the incident and brought it to his cousin's home, but never saw it again after he moved from that home months later.

According to [REDACTED] he never saw [REDACTED] turn around when he began to run away from the police. [REDACTED] stated that [REDACTED] was on the sidewalk and when officers started to shoot at [REDACTED] ran into the street toward the church. The last time [REDACTED] saw [REDACTED] he was in the street and his back was toward [REDACTED] and the officers. [REDACTED] stated [REDACTED] never looked in the direction of the officers and he never saw anything in [REDACTED] hands after he started to run.<sup>80</sup>

[REDACTED] was deposed on June 25, 2014. On May 31<sup>st</sup>, 2011, [REDACTED] visited his sister [REDACTED] who lives on the corner of 124<sup>th</sup> Street and Wallace Street at [REDACTED] [REDACTED] He was standing in front of the northern wrought iron gate of the home, speaking

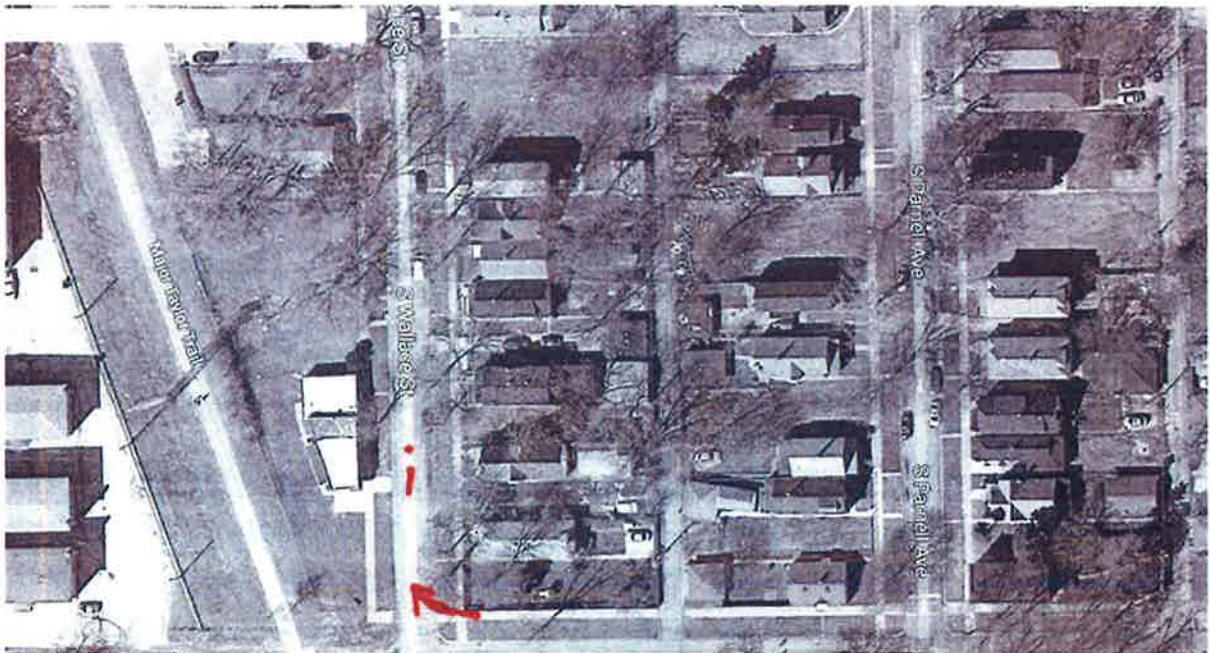
<sup>79</sup> COPA attempted to obtain this exhibit from the City of Chicago, Plaintiff's counsel and the Iowa court reporter without success.

<sup>80</sup> Att. 198 & 199.



to his sister, who was inside the gate. As he was outside speaking to his sister, he saw a spotlight slowly moving along his sister's wooden fence, along with the shadow of two men. He could hear the two men casually talking to each other. He then heard gunshots. He was not able to see anyone shooting because it was a more than six feet tall wooden fence that separated him from the event. He heard no one give any commands or shout anything. When he heard the shots, [REDACTED] turned around from the wrought iron fence he was standing along, took a step or two, then dove down to the ground about three feet north into the space between the gate and the sidewalk at the same address. He was pressed up against the gate.

As he was on the ground or leaping to the ground, he looked back over his shoulder and saw an individual, now known to be [REDACTED] running and two officers chasing behind him. According to [REDACTED] no one ran past him on the sidewalk, but he saw [REDACTED] and two Arabic or Mexican officers run west and then northwest toward Wallace Street. He lost sight of them as they ran behind his car and the tree on the corner near his sister's address. [REDACTED] was asked to identify the path of travel for [REDACTED] and the two officers in pursuit via a map. The below exhibit from his deposition identifies [REDACTED] ran west on the north sidewalk of 124<sup>th</sup> Street before running into Wallace Street, which is what the red arrow is used to mark, where [REDACTED] subsequently lost sight of both [REDACTED] and the pursuing officers. According to [REDACTED] the officers and [REDACTED] followed the same path down the middle of the street, not on the sidewalk.



During this period of lying on the ground, [REDACTED] heard constant fire. [REDACTED] did not see [REDACTED] holding a gun as he ran. He also did not see the officers' guns because it was dark, and the streetlight was out near that intersection. Once the gunfire stopped, his sister let him inside the gate and they went inside the home for approximately three minutes. When he came back outside moments later, there were several officers. He walked out of the gate and stepped over a long nose .38 revolver that was in the middle of the sidewalk very close to where he was lying during the gunshots. [REDACTED] was able to identify the exact make and model of the firearm. He saw that type of firearm previously via his military experience, which is why he could quickly identify the

weapon. ██████ denied owning a .38 long nose revolver. He did not see the gun earlier and never saw anyone put it, drop it, or throw it there, and maintained he was only inside his sister's residence for a matter of minutes. Additionally, as he was lying on the ground earlier, he never heard any metal hit the ground on or near the sidewalk.

As ██████ stepped out of the gate and onto the sidewalk, an officer walked toward him, and he turned around trying to get out of the way. He saw another officer walking down the middle of the street. The same officer that walked toward ██████ walked straight to the gun and shined his flashlight on it. The officer stood by the gun, apparently guarding it. ██████ spoke with two uniformed officers that night, by the gun. He later spoke with a detective, who he purposefully told he did not see anything. He was asked to provide his driver's license to one of the officers on scene. ██████ Durango was also struck by a bullet during the incident.<sup>81, 82, 83</sup>

On October 26, 2018, COPA received a video from ██████ sister, ██████ of a video-recorded statement of ██████ relative to this incident. It is three minutes long. Mr. ██████ was consistent in his telling of the events on May 31, 2011. Mr. ██████ added, the police vehicle fired at the two men walking down the street, before the police vehicle stopped. Mr. ██████ confirmed neither ██████ nor the two officers in pursuit ran passed him on the sidewalk.<sup>84</sup>

#### **b. Digital Evidence**

**Office of Emergency Management Communication (OEMC) 911 calls** for the incident indicate numerous individuals called 911 to report shots fired in the area of the incident.<sup>85</sup>

**Crime Scene Processing Report (RD# HT3 ██████ Report # ██████** documents that a Smith & Wesson 38 Special 6-shot revolver was found on the sidewalk pavement and inventoried.<sup>86, 87</sup>

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<sup>81</sup> Att. 162.

<sup>82</sup> It should be noted ██████ was interviewed during a canvass on the evening of the incident where the police noted his name and date of birth. He stated he heard gunshots but "didn't see anything." Att. 138.

<sup>83</sup> According to numerous canvasses done by both CPD and IPRA, no additional individuals were noted as eyewitnesses to this incident.

<sup>84</sup> Att. 197.

<sup>85</sup> Atts. 55-81.

<sup>86</sup> Att. 17.

<sup>87</sup> IPRA canvass sheets indicated that IPRA investigators spoke to ██████ from ██████ on the night of the incident. ██████ indicated that he saw a firearm immediately in front of his residence on the sidewalk. ██████ interview was summarized: "██████ heard about 30 gunshots and went inside. ██████ stated that he saw a black revolver with a brown handle on the sidewalk in front of his residence." (Att. 12). Mr. ██████ refused any further statement.



Exhibit 2. Picture of the recovered weapon on the sidewalk.<sup>88</sup>



Exhibit 3. Up close picture of the recovered weapon.<sup>89</sup>

**c. Physical Evidence**

The **postmortem report from the medical examiner's office** indicates a gunshot wound noted to the right of the face, to the right of the nose. There was blood coming from both ears. There were additional gunshot wounds noted in the following locations: anterior right chest, right flank, left forearm, and right little finger. The examination and report were done by Dr. [REDACTED]. The specific gunshot wounds will be described in detail below.

One gunshot wound is to the left forearm and chest. The entrance wound is over the ulnar aspect of the left forearm. No noted sooting or stippling over the skin about the wound. An exit

<sup>88</sup> Att. 20, picture 1.

<sup>89</sup> Att. 20, picture 3.

wound is over the ulnar aspect over the ventral surface of the left forearm. The bullet reenters the right lateral chest wall. This indicates the force producing the wound came from the left side of the body. The bullet does not exit the body but is recovered in the muscle of the right side of the chest and does not penetrate any organs.

A second gunshot wound is a penetrating gunshot wound to the left forearm. The entrance wound is over the dorsal aspect of the left forearm, just distal to the left elbow. No noted sooting or stippling over the skin about the wound. The exit wound is over the radial aspect of the ventral surface of the left forearm.

A third gunshot wound is a perforating gunshot wound to the right side of the back. The entrance wound is 24-3/8 inches down, from the top of the head. No noted sooting or stippling over the skin about the wound. An exit wound is over the lateral aspect of the right side of the body, 24-1/2 inches down from the top of the head. No bullet is recovered. The direction of the gunshot is back to front and slightly upward.

A fourth gunshot wound is a wound to the right little finger, it appears as a graze type of wound tearing off part of the finger and fingernail and has overall dimensions of 1/2 inch in greatest dimension.

A fifth gunshot wound is a penetrating gunshot to the face and head. The entrance wound is just to the right of the nose between the right eye and right side of the nose. No noted soot or stippling over the skin about the wound. No exit wound is identified. Fragments of a brass jacket and lead are recovered from the brain with much difficulty. The direction of the gunshot wound appears nearly horizontal to possibly slightly upward and is front to back. There is also blood aspiration present in the right and left lungs. As a consequence of the wound, there is a massive destruction of the brain tissue for several centimeters around the gunshot wound path. Some additional blood was found in the trachea indicating extensive blood aspiration. The medical examiner noted: "[o]f all the gunshot wounds, this is certainly the most serious and the most immediately lethal. It does not appear to be survivable."<sup>90</sup> The cause of death is multiple gunshot wounds. The manner of death is homicide. [REDACTED] had no alcohol or drugs in his system at the time of death.<sup>91</sup>

**Illinois State Police (ISP) Laboratory Report (RD # [REDACTED])**, documents a Smith & Wesson<sup>92</sup>, model military and police, .38 special caliber revolver, was inoperable as received.<sup>9394</sup>

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<sup>90</sup> Att. 135 at p. 5.

<sup>91</sup> Att.135.

<sup>92</sup> This revolver was recovered, from the sidewalk area, in front of 11249 S. Wallace.

<sup>93</sup> Att. 133.

<sup>94</sup> The deposition of Forensic Scientist [REDACTED] was taken on January 6, 2015. Ms. [REDACTED] worked for the Illinois State Police and specialized in firearms identification. Ms. [REDACTED] examined the .38 special caliber revolver found at the scene and found it to be inoperable as received. Ms. [REDACTED] examined the revolver and found that it contained quantities of dirt and grime inside the firearm. Ms. [REDACTED] indicated the cylinder rod was unable to rotate, and the ejector would not move. Ms. [REDACTED] indicated the inoperability of this firearm would not be apparent to the naked eye, and to discover the issue, she had to manipulate the firearm. (Att. 168).



**Illinois State Police (ISP) Laboratory Report** (RD # [REDACTED]), documents the Smith & Wesson weapon found at the scene and the bullets inside the gun revealed no latent impressions suitable for comparison.<sup>95</sup>

**Illinois State Police (ISP) Laboratory Report** (RD # [REDACTED]), documents all the involved officers' weapons were examined and found in firing condition. The report further documents four recovered fired cartridge cases were fired from Officer [REDACTED] weapon. Four recovered fired cartridge cases were fired from Officer [REDACTED] Beretta. Three recovered fired cartridge cases were fired from Officer [REDACTED] weapon. Twenty-four recovered fired cartridge cases and two recovered bullet jacket fragments were fired from Officer [REDACTED] rifle. In addition, a recovered bullet lodged in [REDACTED] left chest, labeled GSW #1 in the Medical Examiner's Report, was found to be fired from [REDACTED] Beretta.<sup>96</sup>

**Illinois State Police (ISP) Laboratory Report** (RD # [REDACTED]), documents an unknown male<sup>97</sup> and [REDACTED] were administered a gunshot residue kit. The results indicate the two subjects may not have discharged a firearm. If they did discharge a firearm, the particles were removed by activity, were not deposited, or were not detected by the procedure.<sup>98</sup>

**d. Documentary Evidence**

**The Case Supplementary Report** (RD # [REDACTED]) documents the officers involved and the subject involved. The weapons for Officer [REDACTED] were a Smith and Wesson model 15 carbine and a Beretta 9mm. Officer [REDACTED] had a Glock .45 caliber Model 36. Officer [REDACTED] had a 9mm Sig Sauer. The weapon for [REDACTED] is listed as a Smith & Wesson .38 caliber revolver.

The report further documents interview with Captain [REDACTED] and the involved officers. **Captain** [REDACTED] related to detectives the involved officers provided him with information substantially consistent with what they told the detectives directly.

Detectives were informed assisting units responded to the area and that Beat [REDACTED] located a firearm on the sidewalk at approximately 12349 S. Wallace Street. The location of this firearm was situated out of the line of sight of Officers [REDACTED] and [REDACTED] per the detectives' subsequent observation.

[REDACTED] related, to detectives, a report substantially consistent with what he has reported since this incident.

**Officer [REDACTED] and [REDACTED] statements to the detectives were generally consistent with their statements to IPRA.**<sup>99</sup>

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<sup>95</sup> Att. 139.

<sup>96</sup> Att. 142.

<sup>97</sup> Now known as [REDACTED]

<sup>98</sup> Att. 150.

<sup>99</sup> Att. 136.

A **Tactical Response Report (TRR) completed by Officer [REDACTED]** documents [REDACTED] did not follow verbal direction, fled with a handgun, was an imminent threat of battery, attacked with weapon, and used force likely to cause death or great bodily harm when he pointed a handgun at officers. The member's response was member presence, verbal commands, and a firearm. According to the report, Officer [REDACTED] fired nine shots at [REDACTED]. The report further indicates Officer [REDACTED] partner fired the first shot, and Officer [REDACTED] reloaded his firearm.<sup>100</sup>

An **Officer's Battery Report (OBR) completed by Officer [REDACTED]** documents Officer [REDACTED] was on duty and in uniform. Officer [REDACTED] was working with two partners. The type of weapon/threat was offender pointed a handgun at officers. The firearm is listed as a 38-caliber revolver.<sup>101</sup>

A **Tactical Response Report (TRR) completed by Officer [REDACTED]** documents [REDACTED] did not follow verbal direction, fled with a handgun, was an imminent threat of battery, attacked with weapon, and used force likely to cause death or great bodily harm when he pointed a handgun at officers. The member's response was member presence, verbal commands, and a firearm. According to the report, Officer [REDACTED] fired two weapons. Officer [REDACTED] fired twenty-eight shots from a M&P 15 rifle; he also fired three shots from a semi-automatic Beretta. The report further indicates Officer [REDACTED] fired the first shot.<sup>102</sup>

An **Officer's Battery Report (OBR) completed by Officer [REDACTED]** documents Officer [REDACTED] was on duty and in uniform. Officer [REDACTED] was working with two partners. The type of weapon/threat was offender pointed a handgun at officers. The firearm is listed as a 38-caliber revolver.<sup>103</sup>

A **Tactical Response Report (TRR) completed by Officer [REDACTED]** documents [REDACTED] did not follow verbal direction, fled with a handgun, was an imminent threat of battery, attacked with weapon, and used force likely to cause death or great bodily harm when he pointed a weapon at officers. The member's response was member presence, verbal commands, and a firearm. According to the report, Officer [REDACTED] fired one weapon. Officer [REDACTED] fired five shots from his weapon. Officer [REDACTED] fired the first shot.<sup>104</sup>

An **Officer's Battery Report (OBR) completed by Officer [REDACTED]** documents Officer [REDACTED] was on duty and in uniform. Officer [REDACTED] was working with multiple partners. The type of weapon/threat was offender pointed a handgun at officers. The firearm is listed as a 38-caliber revolver.<sup>105</sup>

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<sup>100</sup> Att. 6.

<sup>101</sup> Att. 7.

<sup>102</sup> Att. 8.

<sup>103</sup> Att. 9.

<sup>104</sup> Att. 10.

<sup>105</sup> Att. 11.

**e. Additional Evidence**

**Civil suit 12 CV** [REDACTED] was filed May 31, 2012 by [REDACTED] [REDACTED] against the City of Chicago and Officers [REDACTED] and [REDACTED].<sup>106</sup> The case settled in 2015, without going to trial for 2 million dollars.

**Inventory Reports under RD** [REDACTED]<sup>107</sup> describe the firearms and capacity from the three officers' handguns.

Recovered from Officer [REDACTED] Glock 36 were four cartridges from the magazine, and one from the chamber, for a total of five recovered cartridges. In addition, there was one empty six capacity magazine from Officer [REDACTED] firearm. Officer [REDACTED] thus fired nine times with a tactical reload. Recovered from Officer [REDACTED] Beretta 92D were 12 cartridges from the magazine, and one from the chamber, for a total of 13 recovered cartridges. Officer [REDACTED] magazine held 15 cartridges, plus one in the chamber. Officer [REDACTED] thus fired three times from his handgun. Officer [REDACTED] also fired a Carbine rifle, Smith & Wesson, Model M&P-15, 223 Remington caliber semiautomatic rifle, but no inventory reports exist to indicate the capacity of this firearm. In his IPRA statement, outlined and summarized above, Officer [REDACTED] indicated he had 28 cartridges in the Carbine, which was not filled to capacity. The inventory reports that reflect use of the carbine rifle fail to provide a magazine capacity.<sup>108</sup> As Officer [REDACTED] ultimately decided to transition to the Beretta handgun, he fired at least 28 cartridges from his Carbine. Finally, recovered from Officer [REDACTED] Sig Sauer P229 were eight cartridges from the magazine, and one from the chamber. Officer [REDACTED] handgun capacity was 13, plus one in the chamber. Officer [REDACTED] thus fired five times with his handgun.<sup>109</sup>

**V. ANALYSIS**

**a. Applicable Directives and Law**

**i. Use of Deadly Force**

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A:<sup>110</sup>

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:

<sup>106</sup> Att. 134.

<sup>107</sup> Property inventory sheets relevant to this case contain evidence recovered under [REDACTED] and [REDACTED]

<sup>108</sup> Att. 142; Att. 194.

<sup>109</sup> Att. 194; Atts. 143-144

<sup>110</sup> This report utilizes the Chicago Police Department General Orders in effect on May 31, 2011.

2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Determinations regarding the potential use of excessive force during an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must consider the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003)

ii. Rule 14

Department rules prohibit making a false report, whether written or oral.<sup>111</sup> To sustain a Rule 14 violation against a police officer, a preponderance of the evidence must demonstrate "the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation."<sup>112</sup>

iii. Legal Standard

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;

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<sup>111</sup> See Chicago Police Department Rule 14.

<sup>112</sup> Agreement Between Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago, Section 6.1(M).



2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

If the evidence gathered in an investigation establishes that it is more likely that the conduct violated Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met, and the finding is **Sustained**. If clear and convincing evidence demonstrates the alleged misconduct did not occur, the finding is **Unfounded**. If clear and convincing evidence demonstrates that the conduct occurred but complied with Department policy, the finding is **Exonerated**. If there is insufficient evidence to reach a Sustained, Unfounded, or Exonerated finding, the finding is **Not Sustained**.

**b. Findings of Material Fact**

COPA makes the following findings of material fact.

**i. [REDACTED] Did Not Possess an Operable Firearm During the Incident**

Officers [REDACTED] and [REDACTED] allege they observed [REDACTED] discharge a firearm in their general direction.<sup>113</sup> However, Officer [REDACTED] who was the closest to [REDACTED] and unlike Officers [REDACTED] and [REDACTED] had a direct line of sight on [REDACTED] never observed [REDACTED] discharge a firearm. Furthermore, Department members searched the area and only located one firearm that [REDACTED] could have possessed during the incident, a Smith & Wesson .38 special [REDACTED] revolver, recovered from the sidewalk area in front of 11249 S. Wallace Street that was later determined to be inoperable.<sup>114</sup> [REDACTED] gunshot residue test also came back negative.<sup>115</sup> There is no evidence that [REDACTED] otherwise

<sup>113</sup> Officer [REDACTED] was in front of Officers [REDACTED] and [REDACTED] and discharged his firearm first. It is possible Officers [REDACTED] and [REDACTED] mistakenly attributed Officer [REDACTED] discharge to [REDACTED]

<sup>114</sup> Att. 133.

<sup>115</sup> Att. 150

discarded a firearm that Department members did not locate or recover.<sup>116</sup> Therefore, a preponderance of the evidence demonstrates [REDACTED] did not possess an operable firearm during the incident.

**ii. There is Insufficient Evidence to Prove or Disprove that [REDACTED] Possessed the Inoperable Revolver Recovered from the Sidewalk Area in Front of 11249 South Wallace Street**

Officers [REDACTED] and [REDACTED] assert they observed [REDACTED] holding a firearm while at or near the corner of Wallace Street and 124th and stated that [REDACTED] pointed the firearm in their direction.<sup>117</sup> An inoperable revolver was recovered from the sidewalk area in front of 11249 South Wallace Street near [REDACTED] alleged flight path.<sup>118</sup> However, other evidence suggests [REDACTED] did not possess the revolver on the date of the incident.

*First*, [REDACTED] stated he did not observe [REDACTED] with an inoperable revolver or any other firearm on the date of the incident and stated that [REDACTED] did not have access to an operable firearm generally.<sup>119</sup>

*Second*, Officers [REDACTED] did not observe [REDACTED] drop a revolver or any other firearm at or near 11249 South Wallace Street. If [REDACTED] possessed the inoperable revolver during the incident, he would have dropped it or thrown it near the sidewalk area in front of 11249 S. Wallace Street while Officers [REDACTED] and [REDACTED] were chasing him (*i.e.* while Officers [REDACTED] and [REDACTED] were observing [REDACTED]). Furthermore, no one else witnessed [REDACTED] drop or throw the inoperable firearm.

*Third*, there is circumstantial evidence that the revolver belonged to [REDACTED] admitted he was near the sidewalk area in front of 11249 South Wallace Street during the incident and [REDACTED] knew the exact make and model of the firearm.<sup>120</sup> Therefore, it is possible the firearm belonged to [REDACTED].

*Fourth*, there is no forensic evidence connecting [REDACTED] to the revolver.<sup>121</sup>

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<sup>116</sup> A preponderance of the evidence demonstrates that [REDACTED] did not possess a firearm, operable or inoperable, while he was in the grassy area at the end of the incident.

<sup>117</sup> Portions of Officers [REDACTED], [REDACTED], and [REDACTED] statements are internally inconsistent and inconsistent with each other's statements and the physical evidence (e.g. Officers [REDACTED] and [REDACTED] alleging [REDACTED] discharged a firearm in their direction). For these reasons, COPA finds that Officers [REDACTED], [REDACTED], and [REDACTED] accounts are insufficiently credible to rely on their statements in the absence of persuasive independent, corroborating evidence.

<sup>118</sup> [REDACTED] exact path of flight is under dispute. As explained below, the available evidence is inconclusive and is not sufficient to prove or disprove that [REDACTED] possessed the inoperable revolver on the night of the incident.

<sup>119</sup> [REDACTED] stated that [REDACTED] generally had access to a "stunt gun" but that [REDACTED] brother had taken the "stunt gun" before the incident. It is possible that the inoperable firearm recovered after the incident was the "stunt gun." However, the recovered inoperable revolver did not bear similarities to the "stunt gun" [REDACTED] described. [REDACTED] indicated that the "stunt gun" was all black and similar to a model Glock.

<sup>120</sup> To be clear, there is also insufficient evidence to find that [REDACTED] possessed the revolver on the night of the incident. [REDACTED] stated he could identify the revolver based on his military experience and expressly denied ownership of the weapon.

<sup>121</sup> There were no latent prints suitable for comparison on the revolver.

For these reasons, COPA finds that the available evidence is insufficient to prove by a preponderance of the evidence that [REDACTED] possessed the inoperable revolver<sup>122</sup> on the date of the incident.

**iii. Officers [REDACTED] and [REDACTED] Did Not Observe [REDACTED] with a Firearm in the Grassy Area**

Officers [REDACTED] and [REDACTED] admitted that they did not observe [REDACTED] with a firearm when [REDACTED] was in the grassy area near the fence.<sup>123</sup> Therefore, a preponderance of the evidence demonstrates Officers [REDACTED] and [REDACTED] did not observe [REDACTED] with a firearm during this portion of the encounter.<sup>124</sup>

**iv. [REDACTED] was Not Moving When Officer [REDACTED] Discharged his Last Six Shots from the Grassy Area**

Officers [REDACTED] and [REDACTED] both also ultimately admitted that [REDACTED] was not moving at the time they made their decision to discharge their firearms in the grassy area.<sup>125</sup> Therefore, a preponderance of the evidence demonstrates [REDACTED] was not moving when Officer [REDACTED] discharged his final six shots at [REDACTED] in the grassy area.

**c. Analysis of the Allegations**

**i. Officer [REDACTED]**

There is insufficient evidence to prove or disprove that Officer [REDACTED] violated Department policy by discharging his weapon at [REDACTED]

Officer [REDACTED] stated he discharged his firearm five times at [REDACTED] at or near the corner of 124<sup>th</sup> Street and Wallace Street because [REDACTED] turned his torso to the left and pointed the barrel of a handgun in Officer [REDACTED] direction. Officer [REDACTED] explained that he feared for Officer [REDACTED] safety.

If Officer [REDACTED] account is materially accurate, Officer [REDACTED] firearm discharge complied with Department policy. [REDACTED] presented an imminent risk of death or great bodily harm

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<sup>122</sup> As explained above, the evidence demonstrates that [REDACTED] did not possess any other firearm during the incident.

<sup>123</sup> Officers [REDACTED] and [REDACTED] stated they could not see [REDACTED] hands.

<sup>124</sup> As explained above, [REDACTED] did not possess an operable firearm during the incident, and even assuming *arguendo* [REDACTED] possessed the inoperable revolver during incident, [REDACTED] discarded the revolver in sidewalk area in front of 11249 S. Wallace Street well before he reached the grassy lot. Therefore, [REDACTED] was unarmed at the end of the incident. However, assuming *arguendo* [REDACTED] actually possessed the inoperable revolver during the beginning of the incident, a reasonable officer with police training would not necessarily know that [REDACTED] was unarmed especially if they did not observe [REDACTED] drop or throw the firearm.

<sup>125</sup> See Att. 190 at p. 37 and Att. 159 at p. 187-188, p 187 line 11-24 & p 188 line 1. Officers [REDACTED] and [REDACTED] allege [REDACTED] was lying flat on his stomach as they approached [REDACTED] in the grassy lot. However, some evidence such as the trajectory of [REDACTED] bullet wounds suggests that [REDACTED] may not have been lying entirely on his stomach, as opposed to his side in some fashion, during this portion of the incident. Nonetheless, [REDACTED] exact position during this portion of the incident is not material to resolving the allegations at issue.

to Officer [REDACTED] if [REDACTED] pointed what would reasonably appear to be fully operable firearm at Officer [REDACTED]<sup>126</sup> and deadly force was reasonably necessary to eliminate the threat.

However, as explained above, there is insufficient evidence to prove or disprove that [REDACTED] possessed the revolver, let alone pointed the revolver in Officer [REDACTED] or anyone else's direction. Without this evidence, COPA cannot determine whether [REDACTED] reasonably appeared to present an imminent risk of death or great bodily harm to Officer [REDACTED] or any other officer, and whether deadly force was reasonably necessary to eliminate the threat. Therefore, there is insufficient evidence to prove by a preponderance of the evidence that Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED] or to prove by clear and convincing evidence that his actions complied with Department policy. COPA finds that Allegation #1 against Officer [REDACTED] is Not Sustained.

**ii. Officer [REDACTED]**

**1. Officer [REDACTED] Firearm Discharge Violated Department Policy**

COPA categorizes Officer [REDACTED] firearm discharge into three volleys: (1) Officer [REDACTED] initial shots fired while at or near 124<sup>th</sup> Street and Wallace Street; (2) Officer [REDACTED] shots while he ran north up Wallace Street; and (3) Officer [REDACTED] final six shots while in the grassy area.

**a. There is Insufficient Evidence to Prove that Officer [REDACTED] Initial Shots Fired While at or Near 124<sup>th</sup> Street and Wallace Street Violated Department Policy**

According to Officer [REDACTED] he fired his initial shots because he saw a gun in [REDACTED] right hand while [REDACTED] was at or near 124<sup>th</sup> Street and Wallace Street. [REDACTED] stated that [REDACTED] turned his body toward the left and brought a gun up toward the officers' direction with his right hand and arm. If this portion of Officer [REDACTED] account is materially accurate,<sup>127</sup> Officer [REDACTED] firearm discharge complied with Department policy. [REDACTED] presented an imminent risk of death or great bodily harm to Officer [REDACTED] if [REDACTED] pointed what would reasonably appear to be fully operable firearm at Officer [REDACTED] and deadly force was reasonably necessary to eliminate the threat.

However, as explained above, there is insufficient evidence to prove or disprove that [REDACTED] possessed the revolver, let alone pointed the revolver in Officer [REDACTED] or anyone else's direction. Without this evidence, COPA cannot determine whether [REDACTED] reasonably appeared to

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<sup>126</sup> The fact that the revolver was inoperable is irrelevant, because Officer [REDACTED] did not know this during the incident. Without an opportunity to closely inspect the revolver, the inoperable revolver would have appeared to be an operable firearm to a reasonably trained police officer under the circumstances.

<sup>127</sup> Officer [REDACTED] alleged that [REDACTED] subsequently discharged his firearm at the officers. As explained above, a preponderance of the evidence demonstrates this did not occur because [REDACTED] did not possess an operable firearm. However, COPA will not address whether it was reasonable for Officer [REDACTED] to misattribute Officer [REDACTED] muzzle flashes as [REDACTED] firing a weapon because it is not material to resolving this allegation.

present an imminent risk of death or great bodily harm to Officer [REDACTED] or any other officer and whether deadly force was reasonably necessary to eliminate the threat. Therefore, there is insufficient evidence to prove by a preponderance of the evidence that Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED] or to prove by clear and convincing evidence that his actions complied with Department policy.

**b. Officer [REDACTED] Shots While on Wallace Street  
Violated Department policy**

As [REDACTED] fled down the sidewalk, Officer [REDACTED] used his carbine to fire more rounds at [REDACTED] while in the middle of Wallace Street, approximately 45 feet away from [REDACTED] as [REDACTED] fled. Officer [REDACTED] stated as he continued to run north up Wallace street, he fired more rounds from his carbine as [REDACTED] crossed the street diagonally toward the west side of Wallace Street and towards the grassy area. Officer [REDACTED] stated during this portion of the encounter he observed [REDACTED] holding his waistband area but did not observe [REDACTED] with a weapon and stated he could not see [REDACTED] right hand.<sup>128</sup> Officer [REDACTED] stated he believed [REDACTED] was armed and, in fear for his life, shot at [REDACTED] to eliminate the threat. However, Officer [REDACTED] never stated he saw [REDACTED] presenting an imminent threat by moving a firearm in his direction or otherwise making a threatening gesture or movement. More than ten carbine shell casings were recovered on Wallace street.

Even assuming Officer [REDACTED] was permitted to use deadly force under Department policy,<sup>129</sup> the type and manner of deadly force used by Officer [REDACTED] was unreasonable under the totality of the circumstances. A preponderance of the evidence demonstrates that Officer [REDACTED] fired more than ten shots with a high-powered carbine while on Wallace Street. This block of Wallace Street was/is a residential street with houses on the east side of the street and a religious building on part of the west side of the block. Cars were also parked on both sides of the street. Officer [REDACTED] carbine was a high-powered firearm capable of penetrating vehicles and property. A reasonable officer would have accounted for the significant risk firing multiple shots from a high-powered firearm poses to residents, pedestrians, and occupants of vehicles, especially when firing at a moving target at night while running. A reasonable officer with police training would also have accounted for the fact that [REDACTED] alleged firearm was no longer visible, and that cover was available to protect himself or herself.<sup>130</sup> The quantity of shots fired by Officer [REDACTED] from his high-powered firearm at [REDACTED] while [REDACTED] fled, reflected a disregard for the safety of others and was unreasonable under the totality of the circumstances.

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<sup>128</sup> Officer [REDACTED] also did not observe [REDACTED] with a firearm during this portion of the encounter and did not describe [REDACTED] making any specific threatening gestures. Officer [REDACTED] did not witness this portion of the encounter.

<sup>129</sup> On the date of the incident, Department members could use deadly force on fleeing felons who did not reasonably appear to present an imminent risk of death or great bodily injury under certain circumstances. The Department subsequently modified its use of deadly force policy.

<sup>130</sup> To be clear, officers are not required to take cover. However, in this case, Officer [REDACTED] excessive use of his high-powered firearm posed a danger to others, and Officer [REDACTED] could have used cover to tactically reassess the situation while protecting himself from any perceived threat posed by [REDACTED]

**c.      Officer [REDACTED] Final Six Shots Violated CPD  
Policy**

As explained above, a preponderance of the evidence demonstrates [REDACTED] was not moving when Officer [REDACTED] discharged his final three shots from his rifle before firing three additional shots from his handgun from less than fifteen feet away. A preponderance of the evidence also demonstrates Officer [REDACTED] did not observe [REDACTED] with a firearm. Officer [REDACTED] stated he feared for his life because [REDACTED] did not comply with his commands to show his hands, and he could not see [REDACTED] hands. Officer [REDACTED] added that he believed [REDACTED] was armed and getting ready to get into a shooting position.

Officer [REDACTED] last six shots were objectively unreasonable under the [REDACTED] of the circumstances. General Order 03-02-01(II)(c) expressly required officers to reassess their use of force based on resistance and actions of the subject. [REDACTED] did not pose an imminent threat of death or great bodily harm to Officer [REDACTED] during this portion of the encounter because Officer [REDACTED] did not observe [REDACTED] with a firearm and observed that [REDACTED] was not moving.<sup>131</sup> Furthermore, [REDACTED] was no longer fleeing and no longer presented a reasonable risk of defeating arrest through resistance or escape. A reasonable officer with police training would have accounted for the possibility that [REDACTED] was not moving and not complying with commands because [REDACTED] was seriously injured or dead, especially considering the number of shots already discharged at [REDACTED] during the encounter. Officer [REDACTED] failed to properly reassess the actual present threat posed by [REDACTED] and simply continued to use deadly force based on his alleged perceptions of [REDACTED] earlier in the encounter. A reasonable officer would not believe a subject who was not moving was about to get into a "shooting position,"<sup>132</sup> especially when Officer [REDACTED] alleges [REDACTED] was lying flat on his stomach.<sup>133</sup> Officer [REDACTED] decision to transition from his carbine to his handgun was particularly troubling as that time provided Officer [REDACTED] an additional opportunity to re-evaluate the actual threat posed by [REDACTED]. A reasonable officer would not have discharged his or her firearm at [REDACTED] under the totality of the circumstances presenting Officer [REDACTED].

Therefore, COPA sustains Allegations #1 and #2 against Officer [REDACTED].

**2.      There is Insufficient Evidence to Prove Officer  
[REDACTED] Provided a False Statement to the Independent  
Police Review Authority Regarding [REDACTED] Physical  
Movements, While [REDACTED] was on the Ground, Prior  
to Discharging his Weapon at or in the Direction of  
[REDACTED]**

In his interview with IPRA, Officer [REDACTED] described approaching [REDACTED] in the grassy lot by stating ". . . ; 'I see him layin' down on, on the ground makin' several movements. Um, me and my partner are yellin' let me see your hands, let me see your hands. Show me your hands. He's

<sup>131</sup> [REDACTED] could not have reasonably appeared to be making any threatening gestures or movements when he was not moving.

<sup>132</sup> [REDACTED] could not have reasonably appeared to be getting into a shooting position when he was not moving.

<sup>133</sup> A suspect lying flat on your stomach is consistent with surrendering. Indeed, many officers command suspects to lie flat on their stomach prior to approaching and handcuffing them.

not complying. Fearing he's armed, I, I open fire."<sup>134</sup> In his deposition, Officer [REDACTED] admitted that [REDACTED] was not moving immediately prior to him discharging his final six shots.<sup>135</sup>

To prove willfulness, a preponderance of the evidence must demonstrate that Officer [REDACTED] intentionally provided a false statement. When COPA investigators asked Officer [REDACTED] to explain the apparent inconsistency between his original statement to IPRA and his deposition testimony, Officer [REDACTED] stated he meant in the deposition that [REDACTED] was not moving immediately before the last six shots; however, he meant in his IPRA statement that [REDACTED] was moving at some point earlier in the altercation when [REDACTED] initially saw him on the ground by the fence. [REDACTED] affirmed that [REDACTED] was not moving immediately before he discharged his final six shots. Officer [REDACTED] explanation of the inconsistency is plausible. Officer [REDACTED] deposition testimony was far more extensive and specific than his initial statement to IPRA investigators. The IPRA investigators did not specifically ask Officer [REDACTED] to explain [REDACTED] physical movements immediately prior to him discharging his final six shots during this part of his statement.<sup>136</sup> The context and specificity of the questions asked to Officer [REDACTED] during his IPRA statement are material to evaluating whether Officer [REDACTED] provided a willful false statement.

For these reasons, there is insufficient evidence to prove or disprove that Officer [REDACTED] provided a false statement to IPRA regarding [REDACTED] physical movements, while [REDACTED] was on the ground, prior to discharging his weapon at or in the direction of [REDACTED]

## VI. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding/ Recommendation
Officer [REDACTED] [REDACTED]	1) It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED]	Sustained/30-day Suspension; relieved of police powers
	2) It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by failing to deescalate his	Sustained/30-day Suspension; relieved of police powers

<sup>134</sup> Att. 144 at p. 31, lines 25-30.

<sup>135</sup> Att. 160 at p. 141-142.

<sup>136</sup> Later in the statement, an IPRA investigator asked Officer [REDACTED] if he could tell what [REDACTED] was doing while he was "makin several movements" and Officer [REDACTED] responded, "No I fear, I feared for my life. Cause I believe he's, he's getting ready to be in a shooting position." Att. 144 at p. 33, lines 6-9. Although Officer [REDACTED] belief was objectively unreasonable, this statement does not inherently contradict his deposition testimony which specifically asked him about [REDACTED] actions immediately prior to Officer [REDACTED] discharging his final six shots.

	<p>use of deadly force after initially discharging his weapon at or in the direction of [REDACTED]</p> <p>3) On June 1, 2011, at Area 2, 727 E. 111th Street, Chicago, Illinois, it is alleged that Officer [REDACTED] provided a false statement to the Independent Police Review Authority regarding [REDACTED] physical movements, while [REDACTED] was on the ground, prior to discharging his weapon at or in the direction of [REDACTED] by stating: "...I see him lying down on, on the ground makin' several movements. Um, me and my partner are yellin' let me see your hands, let me see your hands. He's not complying. Fearing he's armed, I, I open fire."</p>	Not Sustained
Officer [REDACTED]	<p>1. It is alleged that on May 31, 2011, at approximately 10:44 pm, at or near the intersection of 124th Street and Wallace Street in Chicago, Illinois, Officer [REDACTED] violated Department policy by discharging his weapon at or in the direction of [REDACTED]</p>	Not Sustained

## VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

Officer [REDACTED] actions during the incident demonstrated a reckless disregard for human life. Officer [REDACTED] appears to have honestly portrayed these last moments of [REDACTED] life, making several statements against his own interest, which are inherently reliable. Officer [REDACTED] admissions that [REDACTED] was not moving and that he was unable to see his hands prior to opening fire, in combination with his failure to articulate a reasonable justification for firing an additional six rounds, demonstrated a failure to reassess the appropriate use force as required by Department policy. In addition, Officer [REDACTED] irresponsible firing of a high-powered carbine rifle at [REDACTED] while running down the middle of Wallace Street in a residential neighborhood with vehicles and housing demonstrated a reckless disregard for the safety of others particularly when Officer [REDACTED] could not articulate how [REDACTED] still posed an imminent threat of death or great bodily injury to himself or others.

COPA would have recommended Officer [REDACTED] be separated from the Chicago Police Department based on his actions during this incident. However, COPA, is unable to make such a recommendation because of Illinois State Law, specifically 65 ILCS 5/10-1-18.1, which states in relevant part: "Upon the filing of charges for which removal or discharge, or suspension of more



than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based. ” Because this event involving excessive use of force occurred on May 31, 2011, the Department cannot bring charges against Officer [REDACTED] to the Chicago Police Board, and the maximum penalty cannot exceed a 30-day suspension. Even so, COPA recommends not only that Officer [REDACTED] be suspended from the Chicago Police Department for that 30-day maximum, but to the extent possible and allowable by law, Officer [REDACTED] be stripped of his police powers, including his badge and firearm, and placed on desk duty. Officer [REDACTED] actions, and importantly his own admissions, detail an officer who is no longer capable of being trusted with police powers.

Approved:

[REDACTED]

Angela Hearts-Glass  
Deputy Chief Administrator

26 June 2019

[REDACTED]

Tracie Smith  
First Deputy Chief Administrator

26 June 2019

[REDACTED]

Sydney Roberts  
Chief Administrator

26 June 2019

Appendix A

Assigned Investigative Staff

<b>Squad#:</b>	█
<b>Investigator:</b>	██████████
<b>Supervising Investigator:</b>	██████████████████
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass